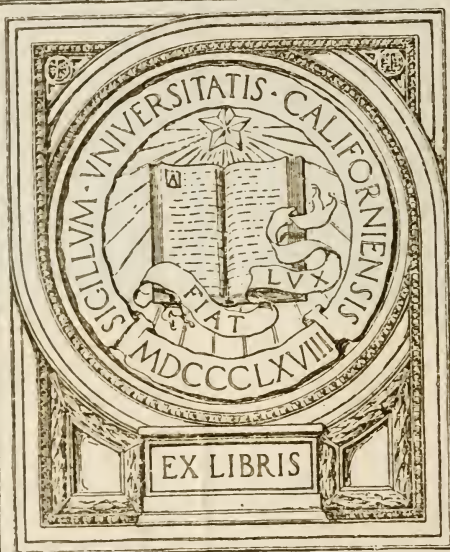


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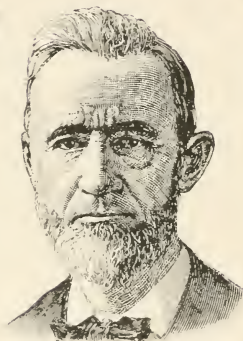
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HON. WILLIAM R. MORRISON,
OF ILLINOIS.



HON. THOMAS M. COOLEY,
OF MICHIGAN.



HON. WALTER L. BRAGG,
OF ALABAMA.



HON. ALDACE F. WALKER,
OF VERMONT.

THE INTER-STATE COMMERCE COMMISSION.

Railway age
L"

LIGHT ON THE LAW:

A REFERENCE BOOK

ON

"THE ACT TO REGULATE COMMERCE."

COMPRISING

THE INTER-STATE COMMERCE LAW, AS ENACTED,
THE ORIGINAL REAGAN AND CULLOM BILLS,
DEBATES IN CONGRESS ON RAILWAY REGULATION,

INTERPRETATIONS OF THE LAW BY RAILWAY OFFICIALS AND
ASSOCIATIONS,

ORGANIZATION AND OFFICIAL ACTION OF THE INTER-
STATE COMMERCE COMMISSION,

ETC., ETC., ETC.

CHICAGO:
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TABLE OF CONTENTS.

	PAGE.
THE INTER-STATE COMMERCE COMMISSION, - - -	7
THE INTER-STATE COMMERCE LAW, - - - -	9
THE ORIGINAL REAGAN BILL, - - - - -	24
THE ORIGINAL CULLOM BILL, - - - - -	28
DEBATES ON THE INTER-STATE COMMERCE BILL:	
REMARKS OF SENATOR CULLOM, - - - -	37
REMARKS OF SENATOR WILSON, - - - - -	42
REMARKS OF SENATOR PLATT, - - - - -	51
REMARKS OF SENATOR CULLOM, - - - - -	82
REMARKS OF SENATOR STANFORD, - - - - -	104
REMARKS OF SENATOR CULLOM, - - - - -	109
REMARKS OF REPRESENTATIVE CRISP, - - - -	118
PROTEST OF MINNEAPOLIS BOARD OF TRADE, - - -	139
MR. ALBERT FINK'S INTERPRETATION OF THE LAW, - -	143
PRESIDENT ALEXANDER'S CRITICISM OF MR. FINK'S VIEWS, -	150
MR. FINK'S REPLY TO PRESIDENT ALEXANDER, - -	152
MR. GEORGE R. BLANCHARD.—THE REAGAN AND CULLOM BILLS COMPARED, - - - - -	156
INTERPRETATIONS OF THE LAW BY RAILWAY ASSOCIATIONS, -	170
ARGUMENT ON BEHALF OF THE SOUTHERN RAILWAY AND STEAMSHIP ASSOCIATION, - - - - -	191
RULINGS OF THE INTER-STATE COMMERCE COMMISSION, - -	208

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P R E F A C E .

The object in preparing this volume was to collect and present in a form convenient for reference and preservation, information calculated to throw light on the intent and meaning of the "Act to Regulate Commerce," otherwise known as the Inter-state Commerce law, which went into effect April 5, 1887. No congressional enactment, probably, has ever called out such widely differing interpretations, while none has ever before undertaken so directly to regulate and govern business and financial interests of such vast magnitude. The importance, therefore, of a clear understanding as to what the framers of this law actually intended is exceedingly great.

The subject of national regulation of common carriers, which had been under active discussion at frequent intervals in Congress, as well as in the State legislatures and through the public press for years, took definite form during 1886 in the passage by the Senate of what is known as the Cullom bill, May 12. The House refused to concur in this bill, but on July 30, 1886, passed what is known as the Reagan bill. The Senate failing to concur, a conference committee was appointed by each body, and the result of their deliberations was the "Act to Regulate Commerce," which was finally passed by the Senate January 14, 1887, and by the House January 21, was approved by the President February 4, and went into effect April 5, 1887. The three bills referred to are reproduced in this volume, and from the mass of material contained in the extended debates in both houses of Congress previous to the passage of the existing law there have been selected the following: The remarks of Senator Cullom, December 15, 1886, and January 10 and 14, 1887, explanatory of the various provisions of the act; the remarks of Senator Wilson, as representing the western and so-called "granger" feeling in favor of stringent railway legislation; the remarks of Senator Platt, of Connecticut, favoring the proposed bill with the exception of the clause prohibiting pooling, and in this speech giving an elaborate argument, strongly fortified by citations from other authorities, in defense of the pooling system; the remarks of Senator Stanford, of California, opposing entirely the principle and form of the proposed legislation, and the remarks of Mr. Crisp, of Georgia, in the House, as representing the views of Mr. Reagan and other extreme advocates of national control of the railways. Mr. Crisp's speech embodies the statement of the con-

ferrees on the part of the house, Messrs. Reagan, Crisp and Weaver, and is a strong statement of the arguments in opposition to pooling and in defense of the long and short haul clause and other provisions of the law as it now stands. As presenting some of the objections of business interests to the proposed bill, there is given the protest of the Minneapolis Board of Trade, presented to Congress just before the passage of the law.

As soon as the law was put in force, the uncertainty and confusion in the public mind in regard to the actual intent and meaning of its provisions continued to find expression, and the views of railway officials and associations were anxiously sought for. As an example of the interpretations rendered, there are given in this work papers by Mr. Albert Fink, Commissioner of the Trunk Lines; by Mr. George R. Blanchard, Commissioner of the Central Traffic Association, and by President Alexander, of the Georgia Central Railroad Company; followed by official interpretations of the law, as its meaning was understood, by the joint committee of general passenger agents of the Trunk Lines and their immediate connections; by the Western Passenger Association; by the Southern Passenger Association, and by the managers of New England railroads in convention.

As soon as the Inter-state Commerce commission was appointed and commenced work, it was confronted with numerous petitions from railway companies and individuals for a suspension of the provisions of the fourth section of the act, concerning the charges for long and short hauls. The difficulties in the way of the enforcement of this section are set forth very clearly in the argument made before the commission by Mr. Milton H. Smith, on behalf of the Southern Railway & Steamship Association. This is followed by the first official order of the Inter-state Commerce commission, suspending the provisions of section 4 for the railways in that association in accordance with the petition. There is also given a record of subsequent action by the commission in declining certain other petitions and accompanying its action with a severe admonition to the railways; and its ruling on April 23, suspending the enforcement of the fourth section in the case of the transcontinental railways.

From a study of this mass of varied information, those interested in an understanding of the Inter-state Commerce law will obtain some help, while waiting for that full light in regard to the merits and defects of the law which can only be obtained from experience of its practical working.

THE EDITORS.

Office of THE RAILWAY AGE,
CHICAGO, May 1, 1887.

ORGANIZATION OF THE INTERSTATE COMMERCE COMMISSION.

On March 22, 1887, President Cleveland announced the appointment of the members of the interstate commerce commission, as follows:

THOMAS M. COOLEY, of Michigan, for the term of six years.

WILLIAM R. MORRISON, of Illinois, for the term of five years.

AUGUSTUS SCHOONMAKER, of New York, for the term of four years.

ALDACE F. WALKER, of Vermont, for the term of three years.

WALTER L. BRAGG, of Alabama, for the term of two years.

The commission held its first session at Washington, D. C., April 1, 1887, and organized by electing Judge Cooley as chairman.

MR. EDGAR A. MOSELY, of Newburyport, Mass., was subsequently elected secretary.

SKETCH OF THE LIVES OF THE COMMISSIONERS.

JUDGE THOMAS M. COOLEY was born in Attica, N. Y., January 6, 1824. He removed to Michigan in 1843, and was admitted to the bar at Adrian in 1846, where he settled permanently in 1848. In 1857 he was appointed to compile the statutes of Michigan, which were published in two volumes. He was reporter of the Michigan Supreme Court 1858 to 1864, and published eight volumes of reports. In 1850 he became Jay Professor of Law in the University of Michigan at Ann Arbor, and held the position for many years. In 1864 he was elected a Justice of the Michigan Supreme Court, continuing on the bench 20 years, but was defeated for re-election in 1885. He has published a "Digest of Michigan Reports" (1866) and a "Treatise on Constitutional Limitations of the Legislative Power of the States" (1868), on which latter work largely rests his fame as a jurist. Several years ago he served with E. B. Washburne and Allen G. Thurman as an Advisory Commission to settle trunk-line disputes, becoming sole arbitrator on the withdrawal of his fellow-commissioners. He was appointed receiver of the Wabash railway lines, east of the Mississippi river, in December, 1886, resigning to accept the position which he now holds.

WILLIAM R. MORRISON, of Waterloo, Ill., was born in Monroe County, that State, September 24, 1825. He was reared on a farm, and after receiving a common-school education was for some time a student at McKendree College. He served in the Mexican war as a private. From 1852 to 1854 he was clerk of the Circuit Court of Monroe County. In 1855 he was admitted to the bar, and began practice at

Waterloo, where he has since made his home. From 1854 to 1860 he was a member of the Illinois House of Representatives, serving as Speaker the last two years. During the civil war he served in the Union army as colonel of 49th Illinois Regiment, which he commanded at Fort Donelson, where he was severely wounded. He was elected to the XXXVIIIth Congress. In 1864 he was defeated for re-election and again in 1866. In 1870 and 1871 he again served in the Legislature. In 1872 he was elected to the XLIIIrd Congress and served continuously until March 3, 1887. He was defeated for re-election by Jehu Baker (Rep.), who had defeated him in 1864 and 1866. For three terms Mr. Morrison was chairman of the committee on Ways and Means. In this position and others of importance in congress he has been a hard worker. He is bold and confident, rarely taking advice from any one. He has taken a prominent part in important legislation, but is best known to the country for his persistent attacks upon the tariff system.

AUGUSTUS SCHOONMAKER, of Kingston, N. Y., was born in Ulster County, that State, in 1828. He was admitted to the bar in 1853. In 1863 he was elected County Judge, in 1875 a member of the State Senate, and in 1877 Attorney-General. He was the Democratic candidate for Court of Appeals Judge in 1881, but was defeated. He became a member of the State Civil-Service Commission in 1883, being appointed by Gov. Cleveland, and is still a member of that body.

ALDACE F. WALKER, of Rutland, Vt., was born in that city about forty-six years ago. He studied law in the office of U. S. Senator Edmunds at Burlington, and was admitted to the bar, but before he had a chance to engage in practice the War of the Rebellion broke out. He went to the front as a private and came out a Colonel. He has been a member of the Legislature, and while State Senator was instrumental in the railroad legislation enacted. In politics Mr. Walker has always been a Republican.

CAPT. WALTER L. BRAGG, of Montgomery, Ala., was born in Lowndes County, Alabama, February 25, 1838. He received a liberal education in Arkansas and at Harvard. He lived in Camden, Ark., where he entered on the practice of law. He served in the Confederate army through the war, and on its close settled in Marion, Ala., moving to Montgomery in 1871. He was chairman of the Democratic State Executive Committee in 1874-'75-'76. In 1876 he was appointed Alabama's member of the National Democratic Committee when the convention met in St. Louis. In 1880 he was Elector for the State at-Large for Hancock and English. In March, 1881, he was appointed President of the Alabama Railroad Commission, and was re-appointed in 1883, his term expiring in March, 1885. Since that time he has practiced law in Montgomery.

THE INTER-STATE COMMERCE LAW.

AN ACT TO REGULATE COMMERCE.

APPLICATION OF THE ACT.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of trans-shipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation, operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

DISCRIMINATION.

Sec. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful,

EQUAL FACILITIES.

Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its track or terminal facilities to another carrier engaged in like business.

LONG AND SHORT HAULS.

Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance; provided, however, that upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission be authorized to charge less for longer than for shorter distances for transportation of passengers or property; and the commission may from time to time prescribe the extent to which said designated common carrier may be relieved from the operation of this section of this act.

POOLS.

Sec. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

RATES—PUBLICATION.

Sec. 6. That every common carrier subject to the provisions of this act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state sep-

arately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, of at least the size of ordinary pica, and copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected.

Any common carrier subject to the provisions of this act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep for public inspection, at every depot where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties, as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier, in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. Reductions in such published rates, fares, or charges may be made without previous public notice; but whenever any such reduction is made, notice of the same shall immediately be publicly posted and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection.

And when any such common carrier shall have established and published its rates, fares, and charges, in compliance with the provisions of this section, it shall be unlawful for such com-

mon carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

Every common carrier subject to the provisions of this act shall file with the commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said commission of all changes made in the same. Every such common carrier shall also file with said commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares, or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid, shall be made public by such common carriers when directed by said commission, in so far as may, in the judgment of the commission, be deemed practicable; and said commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published; but no common carrier, party to any such joint tariff, shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares, or charges thus made and published.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States in the Judicial District wherein the principal office of said common carrier is situated or wherein such offense may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such

service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such Circuit Court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of trans-shipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act.

CONTINUOUS CARRIAGE.

Sec. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by any other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

LIABILITY OF CARRIERS.

Sec. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

ACTION FOR DAMAGES.

Sec. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act in any District or Circuit Court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

PENALTIES FOR VIOLATION.

Sec. 10. That any common carrier subject to the provisions of this act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense.

THE COMMISSION.

Sec. 11. That a commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years respectively, from the first day of January, anno Domini, eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

POWERS OF COMMISSION.

Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

COMPLAINTS TO COMMISSION.

Sec. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

INVESTIGATION OF CHARGES.

Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured ; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

All reports of investigation made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

Sec. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission ; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

PROCEEDINGS IN COURT.

Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this act, shall violate or refuse or neglect to obey any lawful order or requirement of the Com-

mission in this act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants, in such manner as the court may direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such court, on on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall think fit, make an order directing such common carrier, or other person so disobeying such writ of injunction or other

proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise ; and such moneys shall be payable as the court shall direct, either to the party complaining, or into court to abide the ultimate decision of the court, or into the Treasury ; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal ; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon ; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same ; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

Sec. 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission

shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations.

PAY OF COMMISSION.

Sec. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the salaries of judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

The Commission shall be furnished by the Secretary of the Interior with suitable offices and all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor, approved by the chairman of the Commission and Secretary of the Interior.

SITTINGS OF COMMISSION.

Sec. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

REPORTS BY CARRIERS.

Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the

provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

REPORTS BY COMMISSION.

Sec. 21. That the Commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

FREE CARRIAGE OR REDUCED RATES.

Sec. 22. That nothing in this act shall apply to the carriage, storage, or handling of property free or at reduced rates

for the United States, State or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibitions thereat, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion; nothing in this act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies. Provided, that no pending litigation shall in any way be affected by this act.

APPROPRIATION.

Sec. 23. That the sum of one hundred thousand dollars is hereby appropriated for the use and purposes of this act for the fiscal year ending June thirtieth, anno Domini eighteen hundred and eighty-eight, and the intervening time anterior thereto.

WHEN THE ACT SHALL TAKE EFFECT.

Sec. 24. That the provisions of sections eleven and eighteen of this act, relating to the appointment and organization of the Commission herein provided for, shall take effect immediately, and the remaining provisions of this act shall take effect sixty days after its passage.

THE ORIGINAL "REAGAN BILL."

IN THE HOUSE OF REPRESENTATIVES.—MARCH 8, 1886.

MR. REAGAN, from the Committee on Commerce, reported the following bill as a substitute for H. R. 2412:

A BILL TO REGULATE INTER-STATE COMMERCE AND TO PREVENT UNJUST DISCRIMINATIONS BY COMMON CARRIERS.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be unlawful for any person or persons engaged alone or associated with others in the transportation of property by railroad from one State or Territory or the District of Columbia to or through one or more other States or Territories of the United States or the District of Columbia, or to or from any foreign country, directly or indirectly to charge to or receive from any person or persons any greater or less rate or amount of freight, compensation or reward than is charged to or received from any other person or persons for like and contemporaneous service in the carrying, receiving, delivering, storing, or handling of the same. All charges for such services shall be reasonable. And all persons engaged as aforesaid shall furnish, without discrimination, the same facilities for the carriage, receiving, delivery, storage, and handling of all property of like character carried by him or them, and shall perform with equal expedition the same kind of services connected with the contemporaneous transportation thereof as aforesaid. No break, stoppage, or interruption, nor any contract, agreement, or understanding, shall be made to prevent the carriage of any property from being and being treated as one continuous carriage, in the meaning of this act, from the place of shipment to the place of destination, unless such stoppage, interruption, contract, arrangement, or understanding shall have been made in good faith for some practical and necessary purpose, without any intent to avoid or interrupt such continuous carriage or to evade any of the provisions of this act.

SEC. 2. That it shall be unlawful for any person or persons engaged in the carriage, receiving, storage, or handling of property as mentioned in the first section of this act to enter into any combination, contract, or agreement, by changes of schedule, carriage in different cars, or by any other means, with intent to prevent the carriage of such property from being continuous from the place of shipment to the place of destination, whether carried on one or several railroads; and it shall be unlawful for any person or persons carrying property as aforesaid to enter into any contract, agreement, or combination for the pooling of freights, or to pool the freights, of different and competing railroads, by dividing between them the aggregate or net proceeds of the earnings of such railroads, or any portion of them; and in any case of an agreement for the

pooling of freights or earnings as aforesaid, each day of its continuance shall be deemed a separate offense.

SEC. 3. That it shall be unlawful for any person or persons engaged in the transportation of property as aforesaid directly or indirectly to allow any rebate, drawback, or other advantage, in any form, upon shipments made or services rendered as aforesaid by him or them.

SEC. 4. That it shall be unlawful for any person or persons engaged in the transportation of property as provided in the first section of this act to charge or receive any greater compensation for a similar amount and kind of property, for carrying, receiving, storing, forwarding, or handling the same, for a shorter than for a longer distance, which includes the shorter distance, on any one railroad; and the road of a corporation shall include all the road in use by such corporation, whether owned or operated by it under a contract, agreement, or lease by such corporation.

SEC. 5. That all persons engaged in carrying property as provided in the first section of this act shall adopt and keep posted up schedules on their respective roads, as described in section four of this act, which shall plainly state:

First. The different kinds and classes of property to be carried.

Second. The different places between which such property shall be carried.

Third. The rates of freight and prices of carriage between such places, and for all services connected with the receiving, delivery, loading, unloading, storing, or handling the same. And the accounts for such service shall show what part of the charges are for transportation, and what part are for loading, unloading, and other terminal facilities.

Such schedules may be changed from time to time as hereinafter provided. Copies of such schedules shall be printed in plain, large type, at least the size of ordinary pica, and shall be kept plainly posted for public inspection in at least two places in every depot where freights are received or delivered; and no such schedule shall be raised in any particular except by the substitution of another schedule containing the specifications above required, which substitute schedule shall plainly state the time when it shall go into effect, and copies of which, printed as aforesaid, shall be posted as above provided at least five days before the same shall go into effect; and the same shall remain in force until another schedule shall as aforesaid be substituted; and it shall be unlawful for any person or persons engaged in carrying property on railroads as aforesaid, after thirty days after the passage of this act, to charge or receive more or less compensation for the carriage, receiving, delivery, loading, unloading, handling, or storing of any of the property contemplated by the first section of this act than shall be specified in such schedule as may at the time be in force. Any company or corporation receiving freight for shipment in the United States to be carried through a foreign country, the ultimate destination of which is some place in the United States, said company so receiving said freight shall keep posted in a conspicuous place at the depot where said freight is received for shipment a schedule giving the through rates to all points in the United States beyond the foreign territory, a failure to do which shall subject the said company or corporation to all the penalties herein fixed; and any freight shipped

into a foreign country, and reshipped into the United States, the through rate on which shall not have been made public as required by this act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

SEC. 6. That each and all of the provisions of this act shall apply to all property, and the receiving, delivery, loading, unloading, handling, storing, or carriage of the same, on one actually or substantially continuous carriage, or as part of such continuous carriage, as provided for in the first section of this act, and the compensation therefor, whether such property be carried wholly on one railroad or partly on several railroads, as defined in section four of this act, and whether such services are performed or compensation paid or received by or to one person alone or in connection with another or other persons.

SEC. 7. That each and every act, matter, or thing in this act declared to be unlawful is hereby prohibited; and in case any person or persons as defined in this act, engaged as aforesaid, shall do, suffer, or permit to be done any act, matter, or thing in this act prohibited or forbidden, or shall omit to do any act, matter, or thing in this act required to be done, or shall be guilty of any violation of the provisions of this act, such person or persons shall be held to pay to the person or persons injured the full amount of damages so sustained, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as costs in the case, to be recovered by the person or persons so damaged by suit in any State or United States court of competent jurisdiction where the person or persons causing such damage can be found or may have an agent, office, or place of business. Any action to be brought as aforesaid may be considered, and if so brought shall be regarded, as a subject of equity jurisdiction and discovery, and affirmative relief may be sought and obtained therein. In any such action so brought as a case of equitable cognizance as aforesaid, any director, officer, receiver, or trustee of any corporation or company aforesaid, or any receiver, trustee, or person aforesaid, or any agent of any such corporation or company, receiver, trustee, or person aforesaid, or of any of them, alone or with any other person or persons, party or parties, may and shall be compelled to attend, appear, and testify and give evidence; and no claim that any such testimony or evidence might or might not tend to criminate the person testifying or giving evidence shall be of any avail, but such evidence or testimony shall not be used as against such person on the trial of any indictment against him. The attendance and appearance of any of the persons who as aforesaid may be compelled to appear or testify, and the giving of the testimony or evidence by the same, respectively, and the production of books and papers thereby, may and shall be compelled the same as in the case of any other witness; and in case any deposition or evidence, or the production of any books or papers, may be desired or required for the purpose of applying for or sustaining any such action, the same, and the production of books and papers, may and shall be had, taken, and compelled by or before any United States commissioner, or in any manner provided or to be provided for as to the taking of other depositions or evidence, or the attendance of witnesses, or the production of other

books or papers in or by chapter seventeen of title thirteen of the Revised Statutes of the United States. No action aforesaid shall be sustained unless brought within one year after the cause of action shall accrue, or within one year after the party complaining shall have come to a knowledge of his right of action. And as many causes of action as may accrue within the year may be joined in the same suit or complaint.

SEC. 8. That any director or officer of any corporation or company acting or engaged as aforesaid, or any receiver or trustee, lessee, or person acting or engaged as aforesaid, or any agent of any such corporation or company, receiver, trustee, or person aforesaid, or of one of them, alone or with any other corporation, company, person, or party, who shall willfully do, or cause or willingly suffer or permit to be done, any act, matter, or thing in this act prohibited or forbidden, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this act required to be done, or cause or willingly suffer or permit any act, matter, or thing so directed or required by this act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this act, or aid or abet therein, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than two thousand dollars.

SEC. 9. That nothing in this act shall apply to the carriage, receiving, storage, handling, or forwarding of property wholly within one State, and not shipped from or destined to some foreign country or other State or Territory; nor shall it apply to property carried for the United States at lower rates of freight and charges than for the general public, or to the transportation of articles free or at reduced rates of freight for charitable or religious purposes, or to or from public fairs and exhibitions for exhibition.

SEC. 10. That the words "person or persons" as used in this act, except where otherwise provided, shall be construed and held to mean person or persons, officer or officers, corporation or corporations, company or companies, receiver or receivers, trustee or trustees, lessee or lessees, agent or agents, or other person or persons acting or engaged in any of the matters and things mentioned in this act.

THE ORIGINAL "CULLOM BILL."

IN THE SENATE OF THE UNITED STATES, MAY 13, 1886.

A BILL TO REGULATE COMMERCE.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States to any other State or Territory of the United States, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State or Territory, and not shipped to or from a foreign country from or to such State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and the term "transportation" shall include all instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

SEC. 2. That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful; and any common carrier who

shall violate the provisions of this section as aforesaid shall be liable to all persons who have been charged a higher rate than was charged any other person or persons for the difference between such higher rate and the lowest rate charged upon like shipments during the same period; or if such lower rate was made on any time contract or understanding, the said common carrier shall be liable to pay a like rebate or drawback to all other shippers over the same route between the same points who have shipped goods during the time that such contract or understanding was in operation.

SEC. 3. That it shall be unlawful for any common carrier, subject to the provisions of this act, to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this act shall, according to their respective powers, afford all reasonable and proper facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith; but no such common carrier shall be required to give the use of its tracks or terminal facilities to another carrier engaged in like business. Any common carrier who shall willfully violate the provisions of this section of this act shall be liable to the person or persons injured thereby for all damages occasioned by such violation.

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, and from the same original point of departure or to the same point of arrival; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time make general rules exempting such designated common carrier in such special cases from the operation of this section of this act; and when such exceptions shall have been made and published they shall, until changed by the Commission or by law, have like force and effect as though the same had been specified in this section.

Any common carrier who shall violate the provisions of this section of this act shall be deemed guilty of extortion, and shall be liable to the person or persons against whom any such excessive charge was made for all damages occasioned by such violation.

SEC. 5. That every common carrier subject to the provisions of this act shall, within sixty days after the appointment of the Commission

hereinafter provided for, file with said Commission appointed under the provisions of this act copies of its tariffs of rates and fares and charges relating to all classes of traffic affected by the provisions of this act, including classifications and terminal charges which in any wise change, affect, or determine any part of the aggregate of such rates and fares and charges, and from time to time all changes made in the same. Such rates, fares, charges, and classifications shall be made public by such common carriers so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall from time to time prescribe the measure of publicity which shall be given to such rates, fares, charges, and classifications, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published.

And when any common carrier shall have established and published its rates, fares, charges, and classifications, or any part of the same, in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation than is set forth and specified in such published rates, fares, charges, and classifications, until the same shall have been changed as hereinafter provided. But nothing in this act shall prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees. No advance in such published rates, fares, charges, and classifications shall be made except after ten days' public notice, but reductions in the same may be made without previous public notice; and the Commission shall prescribe the manner in which notice of advances and reductions in such published rates, fares, charges, and of changes in classifications shall be given.

In cases where passengers and freight traffic pass over lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges, it shall be deemed a compliance with the requirements of this section in respect to the filing of such tariffs if copies of such joint tariffs shall be filed by any one of said common carriers, and the same shall then be published by the common carriers who are parties thereto, in compliance with the provisions of this section; but no common carrier party to any such joint tariff shall be liable for the failure of any other common carrier party thereto to observe and adhere to the rates, fares, or charges thus made and published.

If any common carrier shall neglect or refuse to file or publish its tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall be subject to a writ of mandamus, to be issued by any circuit court of the United States within the jurisdiction where the principal office of said common carrier is situated, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this act; and failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as

complainants, may also apply, in any such circuit court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this act, until such common carrier shall have complied with the aforesaid provisions of this section of this act; and for any willful violation or failure to comply with the aforesaid provisions of this section the court may award such costs, including counsel fees, by way of penalty, on the return of said writs and after due deliberation thereon, to the Commission aforesaid, as may be just.

SEC. 6. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

SEC. 7. That any common carrier who shall willfully do, cause to be done, or permit to be done any of the acts, matters, or things in this act declared to be unlawful shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within whose jurisdiction such offense was committed, be subject to a fine of not more than five thousand dollars for each offense: *Provided, however,* That whenever such common carrier is a corporation, any officer, agent, or person connected therewith who shall be guilty of any such violation of this act shall be personally liable as and for a misdemeanor, and, upon conviction thereof in any district court of the United States within whose jurisdiction such offense was committed, shall be subject to a fine of not more than five thousand dollars for each offense.

SEC. 8. That a commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this act shall continue in office for the term of two, three, four, five, and six years, respectively, beginning with the first day of July, anno Domini eighteen hundred and eighty-six, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official re-

lation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

SEC. 9. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and to that end may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provision of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

SEC. 10. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complainant within the time specified, or there shall appear to be any reasonable ground for investigating said complainant, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

SEC. 11. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

SEC. 12. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

SEC. 13. Whenever any common carrier, as defined in and subject to the provisions of this act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants, in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries

as the court may think needful to enable it to form a just judgment in the matter of such petition ; and on such hearing the report of said Commission shall be prima facie evidence of the matters therein stated ; and if it be made to appear to such court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same ; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such court to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents, of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise ; and said court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise ; and such moneys shall be payable as the court shall direct, either to the party complaining, or into court to abide the ultimate decision of the court, or into the Treasury ; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said court may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal ; but such appeal shall not operate to stay or supersede the order of the court or the execution of any writ or process thereon ; and such court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same ; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses for the courts of the United States. For the purposes of this act, excepting its penal provisions, the circuit courts of the United States shall be deemed to be always in session.

SEC. 14. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules

or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commissioner and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations.

SEC. 15. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the salaries of judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

The Commission shall be furnished by the Secretary of the Interior with suitable offices and all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. All of the expenses of the Commission, including all necessary traveling expenses incurred by the Commissioners, or by their employees under their orders, in making any investigation in any other places than in the city of Washington, shall be allowed and paid, on the presentation of itemized vouchers therefor approved by the chairman of the Commission and the Secretary of the Interior.

SEC. 16. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted, or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this act.

SEC. 17. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual report shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts, and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain

such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this act, prescribe (if, in the opinion of the Commission, it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

SEC. 18. That the Commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

SEC. 19. That the said Commission shall specially inquire into that method of railroad management or combination known as pooling, and shall report to Congress what, if any, legislation is advisable and expedient upon that subject.

SEC. 20. That nothing in this act shall apply to the carriage, storage, or handling of property free or at reduced rates for the United States, state, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the issuance of mileage, excursion or commutation passenger tickets; nothing in this act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, and nothing in this act contained shall in any way abridge or alter the remedies now at law provided, but the provisions of this act are in addition to such remedies. But no person, association, or corporation shall at the same time prosecute any complaint before said Commission and pursue his or its remedy at law; and, lodging a complaint before such Commission shall suspend, until the same is disposed of, the common law remedy; and it is expressly provided that no pending litigation between railroad companies shall in any way be affected by this act: *Provided*, That the time when any common law remedy shall be suspended under this section shall not be counted under any statute of limitation against such remedy.

SEC. 21. That the sum of one hundred thousand dollars is hereby appropriated for the use and purposes of this act for the fiscal year ending June thirtieth, anno Domini eighteen hundred and eighty-seven, and the intervening time anterior thereto.

DEBATE

IN THE SENATE OF THE UNITED STATES

ON THE

INTER-STATE COMMERCE BILL.

REMARKS OF MR. CULLOM.

IN THE U. S. SENATE DECEMBER 15, 1886.

MR. CULLOM. Mr. President, during the last days of the last session of Congress a conference was appointed by the two Houses upon Senate bill 1532, to regulate commerce. The conferees on the part of the Senate have instructed me to make a report, which I send to the desk.

The Chief Clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House of Representatives to the bill (S1532) to regulate commerce having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows—

MR. CULLOM. The conferees report an amendment to the Senate bill in the nature of a substitute, and, as the Senate will remember, the bill is a pretty long one, and as it is not my purpose to ask the Senate to vote upon it to-day, because I think it is due to the Senate that every member should have an opportunity of seeing what it is, I do not know that it is necessary to have it read. I ask, therefore, that the report be printed and laid upon the table for action hereafter.

MR. ALDRICH. I would like to suggest to the chairman of the committee that as this is an important bill, and contains important provisions affecting vast material interests which have never been considered by the Senate, a day certain be fixed for its consideration after the holiday recess.

MR. CULLOM. I desire to make a statement of the changes in the bill. The following is a statement of the changes in the bill as passed by the Senate which have been agreed to and are recommended by the committee of conference:

Section 1 is amended by inserting the words "or the District of Columbia" after the words "United States" where they occur in lines 9 and 9, to make it plain that the act will apply to transportation between the States and Territories and the District of Columbia, as well as between the States and Territories.

The term "railroad" is defined in this section, beginning with line 24, as including "all bridges and ferries used or operated in connection with any railroad;" and to these words the following have been added: "And also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease."

Sections 2, 3 and 4 of the Senate bill, prohibiting discriminations, contained provisions in relation to the recovery of damages. These have been stricken out of said sections, and have been grouped together in one section, which is made section 8 of the committee bill. Except as to this rearrangement, substantially the only change made has been the addition of the provision of the House bill that "a reasonable counsel or attorney's fee" shall be allowed by the court in every case of the recovery of damages. The parts of said sections which are stricken out in consequence of the rearrangement referred to are all of section 2 after the word "unlawful," in line 13, all of section 3 after the word "business," in line 18, and lines 23 to 27, both inclusive, in section 4. No other change is made in section 2.

Section 3 is also amended by striking out the words "and proper," in line 12, and substituting therefor the words "proper and equal," so as to require railroads to afford "equal" as well as "reasonable and proper" facilities to connecting roads for the interchange of traffic. Also, by striking out the words "but no such common carrier shall be required to give the use of its track or terminal facilities to another carrier engaged in like business," and by substituting therefor the following: "And shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

Section 4 of the Senate bill is amended by striking out the words "and from the same original point of departure or to the same point of arrival," in lines 7 and 8, and inserting in lieu thereof the words "the shorter being included within the longer distance;" also, by inserting after the words "in special cases," in line 13, the words "after investigation by the commission."

This section is further amended by striking out the following words in relating to the power of the commission to suspend the operation of the section, beginning in line 16:

Make general rules exempting such designated common carrier in such special cases from the operation of this section of this act; and when such exceptions shall have been made and published, they shall, until changed by the commission or by law, have like force and effect as though the same had been specified in this section.

And by substituting therefor the following words:

Prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

Section 19, requiring an immediate investigation by the commission of the necessity of legislation upon the subject of pooling, has been stricken out, and section 5 of the committee bill contains the provision of the House bill prohibiting pooling, with some modifications of the language.

Section 5 of the Senate bill has been replaced by section 6 of the committee bill, which combines most of the provisions of the Senate and

House bills upon the subject of publicity of rates. Section 5 made it the duty of the commission to secure publicity of rates as far as might be found practicable; not only the rates between points on each railroad, but rates over connecting lines as well. The new section requires each railroad to make public the rates between points upon its own line, and in addition the committee is directed to secure publicity of rates over connecting lines so far as may be found practicable.

Section 9 of the committee bill is an addition to the Senate bill, and provides that persons claiming to be damaged by the violation of the act by any common carrier may either make complaint to the commission as provided in the Senate bill, or may institute suits for the recovery of damages in their own behalf in the district or circuit courts of the United States.

Section 8 of the Senate bill has been changed so as to provide that the terms of the commissioners first appointed shall run for two, three, four, five, and six years, respectively, from January 1, 1887, without regard to the time of their appointment.

Section 9 of the Senate bill is amended by adding to the provisions for compelling officers of railroads to testify, when summoned by the commission, the following:

The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Section 20 of the Senate bill has been amended by inserting the following after word "religion" in line 8:

Nothing in this act shall be construed to prevent railroads from giving free carriage to their officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees.

Also, by striking out all after line 9, and substituting therefor the following:

Existing at common law or by statute, but the provisions of this act are in addition to such remedies: *Provided*, That no pending legislation shall in any way be affected by this act.

MR. PLATT. Mr. President, as the report of the conference committee was not fully read, even the concluding formal part of it being omitted in the reading, the Senate was not informed by the reading of the report that I did not concur by my signature in the conclusions at which the conferees arrived. It is therefore, perhaps, proper that I should say at this time that I was unable to bring my mind to the signature of this report, and it is also perhaps fair that I should state, to some extent, the ground upon which I withheld my signature.

I think I should, though with great reluctance, have consented to all the provisions and recommendations of the report but one. I should have had great reluctance in subscribing to the recommendation for the change of the Senate provision relating to short hauls and long hauls; but if it had been necessary to get an agreement I think I would not have withheld my assent to that change. But I was unable to agree to the surrender of the provision in the Senate bill directing the commission, when it should be appointed, to make an immediate investigation of what is known as pooling between railroads and to report their conclusions and recommendations thereupon to Congress, and substitute therefor the

absolute prohibition under penalties of a thousand dollars a day for non-compliance, with the provision which was contained in the House bill or the House amendment to the Senate bill.

I will say now, however, that I think the public prejudice, if there be one, existing against pooling by railroads is largely the result of ignorance on the part of the public as to what railroad pools really are. The Senator from Vermont [Mr. Edmunds] suggests "want of information." I do not know that the public is ever ignorant, but I do believe that there exists a very great deal of misapprehension in the public mind as to the nature, the effect, the result upon the general welfare of the country of pooling contracts between railroads; and I believe, as I thought the Senate believed, that the bill as it was passed by the Senate was calculated to cure whatever evils had grown out of the system of railroad pooling, so that before the report of the commission which was provided for in the Senate bill upon this subject should be made, the people would have become convinced that the evils which they supposed to result from the pooling of freights by railroads were either imaginary or had been cured by the operation of the bill which was passed by the Senate.

I was not unmindful of the fact that all interstate commerce, so far as relates to freight, is to-day transacted under pooling arrangements by the railroads, and that an absolute prohibition of pooling was to break up at once, or, as the bill now reads, within sixty days after its passage, every arrangement by which the interstate commerce business of this country is at present conducted. It seemed to me, with my knowledge of the history of the management of railroads, and with my knowledge of legislation upon this subject, that the result would be an immediate rate-war by all the railroads of the United States. At least, that was my apprehension, and I believed that the evils and consequences which would result from that would be very much greater in their injurious effects upon the public, upon the prosperity of the country, than any evils which now exist by reason of what are known as pooling contracts.

MR. CULLOM. Mr. President, I did not expect to say anything on the general subject of the bill, and I shall only add a word to what has been stated.

I think that my colleague on the committee is probably laboring under undue fear of the consequences of the passage of this bill on account of the prohibition of pooling. One of the purposes of the bill itself by requiring publicity of rates and preventing change of rates to a higher schedule, except on ten days' notice, is to bring about that stability of rates which the railroad companies themselves are appealing to us to have brought about, because under the system of pooling they have not been able to bring it about.

So, in my judgment, the apprehension of the Senator from Connecticut that it is going to be injurious to the business of the country will prove to be unfounded, at least I hope and I believe so. I think every Senator will bear me out in saying that I have not been disposed to consent to anything going into this bill that was unreasonable, at least in my own judgment. As I said a moment ago, I would not have consented to the provision of the bill prohibiting pooling if I believed it would bring upon the country that sort of trouble which the Senator from Connecticut indicates that he apprehends. Every one knows that the rail-

road companies themselves have finally become reconciled to some national legislation, because they have not been able to protect themselves, one from another, and I think that the provisions of this bill in relation to publicity, and the other provisions to guard against various wrong-doings on their part, will have very great force and effect in bringing about that sort of stability which it has been the ostensible purpose at least of pooling to secure.

Every one knows that this question has been bandied about here from one Congress to another for many years, and Congress has never yet done anything on the subject. The Supreme Court of the United States, within the last two or three months, has made a decision which throws upon Congress the unquestionable duty of legislation regulating interstate commerce if we believe it ought to have any regulation. While the bill is not exactly as I wanted it, while it is not exactly the bill of the Senate, yet except as to the provision in regard to pooling it is practically the Senate bill, and I hope that Senators when the time comes for its consideration will allow the report to be concurred in.

REMARKS OF MR. WILSON, OF IOWA.

IN THE U. S. SENATE DEC. 21, 1886.

The Senate resumed the consideration of the report of the Committee on Commerce on the bill (S. 1,532) to regulate commerce.

MR. WILSON, of Iowa.—Mr. President, it is more than a decade since the agitation which finds a result in the report now commanding our attention became active in Congress. It had moved upon the minds of the people and made its presence felt by the instrumentalities of state governments before it appeared here. At its inception it manifested staying powers which portended ultimate success. It was an assertion by disturbed conditions and interests of sections, localities, business of the forceful doctrine of equality on which our system of government is founded. It was a cumulative declaration that that doctrine is not confined in its application to the individual and his distinctive personal relations, but extends to all of the affairs, interests, and relations that are evolved and established by organized communities and movements of government. It was an assertion that the equality which has been our boast and pride from the beginning is a principle of society applicable to all things upon which government can act. Hence the agitation in the very nature of things had staying powers equal to all of the exactions which the struggle precedent to success might impose.

A comparatively new system of transportation had in effect and substantially reversed all of our methods of domestic trade and commerce. It had assaulted all of the doctrines of our long established law relative to the duties and responsibilities of common carriers. It had asserted a masterful control of the doctrine of equal rights, and established in its stead a practice of discrimination that at last shocked the people's sense of justice and fair play. It laid its usurping hand upon sections, localities, associations, and individuals, and all of their interests of trade, commerce, and business of whatsoever kind. It has steadily and unreasonably refused to recognize the simplest business principles, and marked out lines of action for itself, which has excited the resentment of almost every interest it was created to serve. It has made itself an intermeddler in almost every department of business and in almost every detail thereof. It has refused to admit that it was created to serve the proper purposes and interests of society, and has assumed to direct and control them. Not the public interests, but its own have been its study, forgetting that the true method of conserving the best conditions of both is to recognize the equal rights of each.

The managers of this system, while admitting great defects in it in respect of its own affairs, have resolutely opposed all efforts of the state and national governments to project and establish reforms which would tend to assure justice and promote the common interest, and this explains why some conservative and proper legislation for the regulation of the unsatisfactory conditions existing in the interstate commerce of the

country was not years ago enacted by Congress. There has been no disposition on the part of the managers of our transportation system to aid in the formulation of legislation which would tend to correct the abuses that they, in common with afflicted individuals and communities, admit to exist. They have tried among themselves to find remedies for some of these things in so far as they affect themselves and the immediate interests committed to their charge, and have uniformly failed. They will neither keep faith with each other nor allow the public to aid them; and in all this they have done violence to their own interests and have intensified the demand of the people for some legislative remedy. It will not be wise to longer delay some affirmative response to this demand.

Mr. President, the contest which has attended this subject has been long and tedious. We have now reached a point in the movement when something may be done. The adoption of the report of the conference committee which we are now considering, by both houses of Congress, while it will not accomplish all that I should like to have done, will afford the country an opportunity to test a regulative remedy, unless objections by the President be interposed by a veto of the bill. That differences of opinion prevail relative to the various propositions embodied in the report, we all know. But this is not a new phase of the movement. From the very commencement of the agitation which has culminated in the bill now before us, these differences have existed.

The most earnest friends of legislative regulation of interstate commerce have never wholly agreed. But they have toilsomely pursued the subject. Study, investigation, earnest effort they have pursued for years. Both houses of Congress have had their proper committees at work on the subject for more than a decade. The public press has given it prolonged attention and forceful discussion. All of these agencies of information and effort, in so far as they have tended to affirmative action, have been confronted by the apparition of the forces of the transportation system of the country. These forces are active now, pleading for further delay and more investigation. In the New York Tribune of the 19th instant I read a reported interview with the president of the New York, Lake Erie and Western Railroad, and from it I make the following extract. The question having been put to him, "What do you suggest?" he answered:

"That Congress at once pass a bill something like this, appointing five boards of commissioners of three members each, to examine all questions involved and clothed with all powers necessary to obtain thorough, accurate information, including the examination of the books and accounts of the railroad companies, one of these boards to act in the territory of the Pacific roads, one for the roads northwest of Chicago, one for the States between the Mississippi and Ohio Rivers, one for the Southern States, and one for the trunk lines; these commissioners to assume their duties immediately upon their appointment by the President and confirmation by the Senate, and be required to have their reports ready by October 1, 1887. Then these fifteen commissioners, as a board, should recommend to Congress when it reassembles next December suitable legislation to meet the requirements of the case and to settle this difficult problem."

No one need have any difficulty in arriving at the true meaning of this statement. It simply means delay. For more than ten years this

has been the policy of the managers of the transporting companies of the country. Their constant and ever repeated declaration has been that Congress is not sufficiently informed in respect of the intricacies of the transportation problem to act with due caution and wisdom thereon. But Congress has for years been informing itself concerning all of the phases of the question. Committees have spent months of time in the investigation. They have visited various sections of the country, examining hundreds of witnesses, and giving to all parties and interests ample opportunity to present their views. Report after report has been made, accompanied by thousands of pages of printed testimony, all of which have been open to the inspection of whomsoever cared to devote their time and give their attention thereto. There is not a proposition either important or unimportant in the conference report now before the Senate that has not been considered in the investigations of the committees of Congress time and again and year after year. During all this time the demand has been for more delay, and it has been allowed until the public has become tired of it and now demands action.

But it is urged that there is great diversity of opinion relative to what ought to be done in the premises. This is true. It has been true from the beginning of the agitation. Will delay change this feature of the case? Will the practices of the transporting companies in respect of the things complained of by the people and concerning which this report proposes remedies? Answering these questions in the light of past experience, a negative must be given to each of them. How are we to resolve this conflict of opinion except by doing something? Theories have been having free course of assertion for years. They are as divergent now as ever. Delay will not change this fact. Another committee, whether it be composed of Senators and Representatives or of commissioners of inquiry, will bring us no more definite result than we now have before us. And so, in my judgment, there is but one way to an effective resolution of this conflict of opinion.

We must have affirmative action. We must enact a law for the regulation of interstate commerce, and by experience under its administration come to a knowledge of the right and wrong of the war of opinion now obstructing our way. We may investigate and debate forever and still be apart. But action and the experience it will enforce are sure to bring an end to the contention that will conserve the true interests of all concerned. If we elect the opposite course then will we invite into the case the elements of danger; for a continuance of the many real iniquities which have found lodgement in our transportation system may induce a resentment on the part of the people that may not be satisfied with the character of experiment it is now proposed to try.

Mr. President, no one who has studied the railroad problem and has come to a knowledge of the men who manage our railroad corporations can doubt its difficulties, nor dispute the very great aggregation of commanding ability found among those who handle the great interests involved. But while these men possess very great ability and are marked intellectual forces, they have, it seems to me, fallen short in one essential element. Had they possessed this at its best, I doubt if the railroad problem with its present involvements could have appeared in this country. That one element is what is usually denominated common sense.

Most of the facts on which the complaints of the people relative to the management of the transportation of the country are based may be accounted for by the absence of this essential element.

There is no other way by which to account for the present unfortunate involvement of the transportation question. The average amount of prudential action found in ordinary business affairs of men would, if applied to railroad management, have avoided our present predicament. This is apparent not only in their relations with the public but also in those pertaining to the corporations themselves. Let a man step out of active railroad management, though still retaining his investment interest, and he is very apt to acknowledge the truth of all that I have said in this regard. I found such a case reported in the Chicago Tribune a few days ago. An ex-railroad manager, still largely interested in Eastern and Western roads, in talking with a reporter of that paper in respect of the very measure we are now considering, said:

"It would prevent reckless competition between the various roads and stop the craze for constructing useless lines in territory already sufficiently supplied with railroad facilities. He was particularly enthusiastic about the provision prohibiting pooling. This, he said, was the best feature of the bill, and he could not see why any particular opposition should be shown toward it by Senator Platt. The law itself would accomplish all and much more than was expected of the pools. There being no longer any reckless competition, no unjust discrimination, and the publicity and uniformity of rates assured, there would no longer be any use for pools. Those pools had proved a most expensive experiment, and no adequate results were gained. Enough would be saved by having no longer to support high-salaried commissioners, assistant commissioners, arbitrators, armies of clerks, and from office rents, advertising, commissions, rebates, etc., to pay the dividends for many of the lines which are now barely able to meet the interest on their indebtedness."

This statement of the case is forceful and true. It comes from a man who has had experience as a railroad manager, and who, as such, doubtless participated in the very follies which, as an investor, he now denounces. He sees how great reform would come from the enactment of this bill. No one thing has given the railroads greater cost and more trouble than the pool system. No one thing has done more to demoralize railroad managers, officers, agents, and all involved either directly or indirectly in its administration than the railroad pool. Indeed, it has come to be expected that the pool of to-day will be disregarded by some of its members to-morrow, and it has come to be the basis of the hope of reward to railroad officers and agents to successfully enlarge business in violation of such arrangements. But such practices cannot be kept under cover forever, and then comes the rate war and loss of revenue from points of competition.

Under the present system, however, these losses are unloaded on to the business of intermediate or local points. This practice, in itself an outrage, is a most fruitful source of complaint on the part of the people. But even when the obligations of the pool are observed the traffic is often conducted on a basis of rates less than fairly remunerative, when compared with those charged at the local stations. A vast amount of the

railroad traffic of the country is done from so-called competing points at rates less than half those charged at local points on the same lines. This is an inequity that ought not to be tolerated, and which the bill we are now considering will prevent, if it shall become a law. Let this be done, and no one can fail to see that it will go very far towards correcting the bad state of feeling existing between the railroads and the people. It will serve the true interests of the railroads, because it will prevent the foolish, wasteful, and demoralizing rate wars; for no railroad company will grant a less than remunerative rate for through freight if it can not unload its loss on the local stations along its line. It will serve the interests of the people whose business goes to and from the local stations, because it will assure them at least as reasonable rates as are given to others, and this is one of the most desirable results that can be found in the entire field covered by the present controversy. If it can be reached and established it will go far towards restoring that equality to localities that has been so perfectly eliminated from our transportation system.

The two sections of the bill reported by the conference committee which most tend to bring about this result are the fourth and fifth.

The fourth section is a modification of the provision as it originally passed the Senate. It preserves the clause of that bill which declared that the provision relative to the shorter and longer distances, shall not be construed as authorizing any common carrier within the terms of the act to charge and receive as great compensation for the former as for the latter. It is also modified so as to make it more effective in respect of the prohibition against greater charges being made for the shorter than the longer distance; and it limits the power of the commissioners to authorize the charging of less for a greater than a shorter distance to special cases. Each one of these modifications is in the line of the original bill as it passed the Senate, and, it seems to me, improves it.

The two sections quoted have been sharply criticised by the representatives of the railroad companies by letters in the public press and by telegrams from the day they were first given to the country in the report of the conference committee. It is objected that the provision of the fourth section in respect of distances will, if enacted into law, establish a rule of mileage rates; that it can only be obeyed by the companies by charging the same rate per mile, no matter what the distance may be. I shall not stop to discuss the subject presented by this objection. It is sufficient to say that the section presents no such proposition, and I shall discuss what we have before us instead of wasting time on what is not here. The language of the section is:

That it shall be unlawful for any common carrier subject to the provisions of this act to charge and receive for the transportation of passengers, or of like kind of property, under substantially similar circumstances and conditions for a shorter than a longer distance over the same line, in the same direction, the shorter being included in the longer distance.

What does this mean? Let me answer this question by an illustration. In round numbers it is, say, 500 miles from Omaha, Neb., and Council Bluffs, Iowa, to Chicago, Ill. Suppose the railroad companies operating lines between these points should, in the event of this bill becoming a law, fix a rate on any particular class of freight at \$40 per car for the entire 500-mile haul, what would result as to intermediate points? Why, that each of such points could not be charged more than \$40 per car for a shorter haul of like class of freight over the same line.

The charge for the haul over the entire line would be the maximum rate for carriage over a part of the line. If the charge be \$40 per car from Council Bluffs over the Chicago, Burlington and Quincy line, then no more than that can be charged from Red Oak, Chariton, Ottumwa, Fairfield, or any other station on the line in Iowa to Chicago, or from any of them to any station on the same road in the State of Illinois. The establishment of this rule by law will be a great relief to all of the people and business on all of said lines, and like results will come to the people and business of every other state, and the territories as well, on every railroad in the country within the terms of the act. The experience of intermediate stations, under this rule, would be very different from that which the practices of the railroad companies now inflicts them with.

Now it is not uncommon for intermediate stations to be forced to pay for the transportation of freight both to and from them double the rates charged between the terminal points of the roads on which they are situate. And this great wrong is one of the most forceful causes of the complaints which have come up from the people relative to railroad management. While it exists there will be discontent, and there ought to be, for the practice is in every sense wrong. It proceeds upon the theory that it is the privilege of the railroad companies to unload upon the hitherto helpless intermediate stations all of the losses and burdens which have resulted from the bad management of the administrator of the affairs of the corporations.

Another inquiry relative to the fourth section has been made in respect of the rates which may be charged under its provisions. Does it authorize a railroad company in all cases to charge as much for a shorter as for a longer distance? If this question were directed against the bill as it came from the House of Representatives it would admit of none other than an affirmative answer, for it simply declared that no railroad company subject to its terms should charge and receive any greater compensation for a shorter than for a longer distance, thus clearly raising the implied power to charge as much by virtue of the terms of the bill itself. But when the question is applied to the bill as it passed the Senate, and to the terms of the report now before us, the answer must be in the negative, for the implication created by the House bill is expressly avoided by the declaration of both the Senate bill and the report that the language employed by them—

Shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance.

Hence the charge fixed for the greater distance will not, by operation of law, become the indisputable rate for the shorter carriage. The question of the reasonableness of the rate is left just as it now exists. So that, if the rate for the long haul of 500 miles be fixed at \$40, as put in the illustration I have used, it will not conclude the shipper from contesting a charge of the same amount for a carriage of 200, or 100, or 50, or any other number of miles.

The first office of the section in respect of its limitation on rates is to protect the people and business of intermediate points from being forced, as they are under present practices, to make good the losses which result from mismanagement or wrong practices, of whatsoever kind, of the administrators of our railway system. The second is to pre-

serve to them the right to contest the reasonableness of the charges imposed just as they now possess it. These are simply the proper rules of conservative business, and are not obnoxious to the criticisms aimed at them by those who may have been engaged in their violation.

But it is objected that the fifth section, which I have already quoted, is harsh, unreasonable, and unjust? Why? Is there anything in it that applies to railroad management a new and exceptional business rule? Do not men get on well in other departments of business without resorting to the practice of pooling? Suppose the managers of our railroads should devote as much time, care, and ability in applying to their affairs the ordinary and conservative business rules which other men observe, could they not present the results of success which appear in other fields of enterprise? Do they not all know from actual experience that the railroad pool is a delusion and a snare? What is more common among them than violations of pooling agreements? What calls them together oftener than these violations?

Do they not know that the whole system and the practices under it tend to business demoralization, and to a sort of moral obliquity in the management of affairs? And are not these things sufficient to suggest to the really able and keen-witted men who control the railroads of this country that it is quite time for them to abandon a practice which hurts quite as much as it helps, is unreliable, vexatious and expensive; first to the corporations and finally to the public? If they do not know these things, then it is quite time to establish a rule of public law which shall not only instruct them but forbid their further practice of the vicious system. I have already quoted from one who has come to realize that the time has come for a change. The fifth section of the bill before us will establish the change if it shall become the law. And when the change shall have been effected, and the strong, vigorous, practical minds in direction of our railroad companies get down to the dutiful work of reforming the abuses which they have too long fostered, I can but believe that they will approve the wisdom of the action which I trust this body is about to take.

Mr. President, another section of the bill deserves special notice. It is the third, and reads as follows:

SEC. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

This section, given the aid of the others, I have noticed is of very great practical value. It asserts the doctrine of equality to which I referred in the early portion of my remarks. It does not introduce a new principle of law. It merely restates the old doctrine of equal rights, which underlies and permeates our entire civil structure.

Persons, companies, firms, corporations, localities, and traffics are all factors of our civil society, and each is entitled to equality in rights and treatment, so necessary to the maintenance of our institutions. Neither the States nor the General Government may interfere with this equality. Much less can it be rightfully interfered with by the instrumentalities of society and its progress created by public law. But it has

been interfered with by the railroad corporations in respect of each and every one of the matters and things mentioned in this section. Nothing has been more common in the practices of the railroad companies than the perpetration of the things therein denounced. Preferences and advantages therein prohibited have been common disbursements by the railroad companies. With them the business interests of persons, firms, companies, corporations, and localities have been made or destroyed at will.

The special rates, rebates, drawbacks, and devices denounced as unlawful by the second section of the bill have assured prosperity or enforced disaster in instances almost beyond computation. This is all wrong, and I can but hope that we have reached a time when these things are to cease by command of law; and it is a cause of congratulation, and will so be regarded by the people, that this command is to be enforced by penal sanctions. In this regard the tenth section of the bill is comprehensive, and can but receive general public commendation. This section will make it the personal interest of all those who manage our transportation system to obey the law. It is as follows: [See Sec. X.]

Taking this section in connection with the others I have noticed, it seems to me that the enactment of this bill will assure substantial reforms in the respects named, and, indeed, I may say that the general structure of the bill gives promise of an effective start in the matter of regulating the great subject of which it treats. It is not a harsh and vindictive bill, as some who will come under its regulative provision in the event of its enactment have alleged. In some respects it is not as radical as I would have wished; but I am willing to try it as it is, and therefore will vote for its passage. It does not seem to me that it will work the harm to the proper and legitimate interests of the carrier companies of the country that some seem to fear it will. No one can be helped by doing injustice to them. Nor do the people ask that this shall be done. They recognize the helpful aid the railroads have given to the development and progress of the country, but they insist on the enactment of a law which will aid them in recovering some of their lost rights. They are willing that the railroad companies shall prosper and be reasonably paid for their service, but they will not recognize them as masters, for they know that they were created to be servants; and it may be set down as one of the things irrevocably resolved upon that the public demand which has induced the presence of this bill here will not cease until justice shall be entrenched in the transportation system of the country.

The progress made toward effecting the demand of the people for proper regulative legislation does not seem to have impressed itself in any considerable practical degree upon the minds of the railroad managers of the country. They have thus far defeated all efforts for such legislation. But they do not seem to have improved their methods. An illustration of this statement may be found in Iowa at this time relative to the agricultural interests of the State. The western portion of the State produced a large corn crop this year. The eastern part of the State had a very light yield of this cereal. The result is that corn is selling at a low price in the western part of the State. The farmers in the eastern section need this cheap corn to feed their stock; for they have horses, cattle, and hogs without number.

Do the railroad companies take these facts into account and adjust their rates to harmonize with these exceptional conditions? Not at all. On the contrary they go right on as though nothing out of the line of ordinary agricultural events had transpired in Iowa. On the 16th instant, corn was selling in Western Iowa at from 20 cents to 25 cents per bushel. In Chicago it was quoted at from $36\frac{1}{2}$ cents to $36\frac{3}{4}$. At Ottumwa, in Southeastern Iowa, the price was 40 cents to 42 cents per bushel. So that Western Iowa corn was selling in Chicago at from 3 to 6 cents cheaper per bushel than the Eastern Iowa farmer could buy it for use on his farm; and these conditions have existed from the day that corn crop matured down to the present time.

What results have we from this state of facts? Why, that the farmers have been forced to sell their horses, cattle, and hogs in a depressed market, and at whatever prices they could get.

From Iowa newspapers I learn that this subject was brought to the attention of the railroad companies. At a meeting of the Live-Stock Breeders' Association, held in this State, the subject was acted on by the adoption of the following preamble and resolution, namely:

Whereas on account of the unparalleled drought, the farmers in Eastern and Central Iowa have a surplus of stock, while Western Iowa and Nebraska have a surplus of corn; and

Whereas the present railroad tariff is driving to Chicago corn that is greatly needed at home: Therefore,

Be it resolved, That we respectfully ask the railroads running through Iowa to reduce their local freight rates, that farmers may be able to obtain grain to feed out their stock.

This action has produced no result. Prices range at about the same figures I have already stated, and the depression of agricultural interests continues, and this in face of the fact that the railroad companies could have extended relief without hurting themselves. If they had given the farmers of Eastern Iowa even the Chicago rate on Nebraska and Western Iowa corn, they would have tided them over the present exceptional period of depression and loss. Can there be a more suggestive illustration of the absence of the element of common sense in business management than these facts present? But this is only one illustration out of scores and even hundreds that might be cited; and while these things are practiced we may be sure that the demand for regulative legislation will not lower its tone nor reduce its exactions. Let us give the response which the bill of the conference committee presents.

REMARKS OF MR. PLATT.

IN THE U. S. SENATE JANUARY 5, 1887.

*MR. PLATT. (Conn.) Mr. President, the utterances of Senators in this Chamber are so liable to be misunderstood, I will not say misrepresented, that I take occasion to say before proceeding with my remarks, and to say it with what emphasis I may, that I am in favor of legislation for the regulation of the business of the railroads of the country within the extreme limits of the Constitution, which I understand to be for the regulation of that portion of the business done upon the railroads of the country which comes within the definition of "interstate commerce." I wish that it were so that Congress had power to go further in the subject of railroad legislation.

More than that, I am in favor of this bill with one exception. I have labored earnestly, with what diligence I might conscientiously, to endeavor to perfect the bill and to assist the chairman of the committee and the other members of the committee in coming to conclusions upon this subject, and I am ready to agree with the report of the conference committee upon all the points except the one to which I shall call the attention of the Senate.

It is not a question of whether we shall legislate for the regulation of interstate commerce transacted by railroads, but it is a question of how we shall legislate. It is a vast and complicated subject that we deal with, vaster and more complicated, I think, than any one apprehends until he has made a careful and exhaustive study of the subject. The very fact that there were moved upon the railroads of the United States in the year of 1885, 437,000,000 tons of freight, a very large proportion of which, I suppose 60 per cent. at least, came under the definition of interstate commerce, the fact that the entire receipts of the railroads of this country in the year 1885 were \$765,000,000, a sum more than twice as great as the entire income of the Government, of which \$519,000,000 were from freight receipts alone, shows how vast the question is. How complicated it is no one can ever know except those who have been practically engaged in the operation of railroads.

The basis upon which we must legislate, as it seems to me, is simple. The justification for legislation is that the railroad business, unlike other business, is of a mixed nature. It is partly private business and partly public business. I think that we should refrain as far as possible from legislating to effect purely private business in this country. But when a private business is "charged with a public use," as the phrase is, when the railroad undertakes to discharge a public duty as well as to conduct its private business, it is eminently proper and necessary that there should be legislation to make sure that the public business is conducted for the public welfare; that its public duty is faithfully discharged, and that no abuses are allowed to exist.

I said the basis of legislation was simple. It should be the enforcement of the common law—that, and nothing more. Congress may not

justify itself, in my judgment, in stepping outside of the well-defined principles of the common law in legislation. Those principles affecting interstate railway business have had a growth of centuries. They provide the remedy for every difficulty which can arise in the operation of railroads. The application of those principles to every evil or abuse which can be charged against railroads and railroad corporations will solve the difficulty and remedy the evil. The difficulty is simply in the application.

So then, I think, we should confine our legislation to the enforcement of the common law. That is simple. It is only this; it can be expressed in a word. The rates charged by the common carriers must be reasonable, and such carriers must only charge like rates for like services. That is all. It has been the intention of this committee to confine legislation within these limits. A careful study of the bill as it was passed by the Senate will show that we did not go outside of those limits, that we undertook to make no new law for the regulation of railroads and the business of railroads and interstate commerce in this country, but that we did undertake to hold the railroad management of this country up to the strict letter of the common law.

We did this intentionally. We did it because in the light of experience in this and other countries we believed that that was the best method of dealing with the railroad problem, because those State Legislatures which had legislated thus and stopped there had done most toward a favorable and satisfactory solution of the railroad problem in the States. For instance, all the legislation of the State of Massachusetts upon this subject is to be found in a single statute which is in chapter 225 of the acts of May 16, 1882. I read it. It is an amendment to a former statute which imposed penalties for violations of the common law. It is this:

SECTION 1. Chapter 94 of the acts of the year 1832 is amended by striking out the first and second sections thereof and inserting instead the following words: "No railroad company shall in its charges for the transportation of freight or in doing its freight business make or give any undue or unreasonable preference or advantage to or in favor of any person, firm or corporation, nor subject any person, firm, or corporation to any undue or unreasonable prejudice or disadvantage."

That and a short-haul law upon which largely the short-haul provision of the Senate bill was modeled, and a single statute in relation to the transportation of milk, is all the remedial legislation which has been reported to in the State of Massachusetts.

In addition to that they have a railroad commission. That commission has very little power. It has power to hear complaints and to make report to the attorney general of the state and to the legislature. That simple legislation has been found to be the most effective state legislation in the United States, and it is in that state where the legislation has been most simple, where it has been strictly confined to a declaration and enforcement of the common law, where the fewest complaints against railroads now exist. It is in those states which have legislated most severely and rigidly where the most numerous complaints, and in my judgment the best founded complaints of railroad abuses now exist.

The committee believed that it was not best in experimental legislation to go too far, for this legislation is experimental. They believed that it was unwise to attempt to prescribe a remedy for every alleged

abuse in railroad management by specific legislation, by hard and fast iron-bound statutes applying thereto. I think the committee were right, and therefore I have great pleasure in standing by the committee bill with the single exception to which I am to-day to call the attention of the Senate.

The discussion upon this bill is narrowed to two issues, and I think the committee and the Senate may be congratulated that the work of the committee has been practically adopted by both branches of the national legislature, with the exception of these two topics which still excite discussion. These two questions are, first, whether the Senate will adopt the modification proposed by the conference committee in the short-haul section, and, second, will it prohibit pooling instead of leaving it for the present to the investigation of the commission.

Now that these two issues come clearly before the Senate, I wish to put in juxtaposition, side by side, the provisions of the Senate bill and the provisions of the bill recommended by the conference committee upon these topics. First, I read the short-haul clause of the Senate bill, section 4:

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, under substantially similar circumstances or conditions, for a shorter than for a longer distance, over the same line, in the same direction, and from the same original point of departure, or to the same point of arrival; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance; *provided, however*, that upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time make general rules exempting such designated common carrier in such special cases from the operation of this section of this act; and when such exceptions shall have been made and published they shall, until changed by the commission or by law, have like force and effect as though the same had been specified in this section.

That is all there is of it except the penalty clause, which appears elsewhere in the conference bill. The section in the conference bill is this:

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance.

It will be seen that those words have been substituted for the words "and from the same original point of departure or to the same point of arrival."

But this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance; *provided, however*, that upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

The main change, as will be seen, recommended by the conference committee is as I have indicated, the striking out in the Senate bill of the words "and from the same original point of departure or to the same point of arrival," and substituting therefor the words "the shorter being included within the longer distance."

Now, I read the Senate bill provision with regard to the subject of pooling. It is simply this :

SEC. 19. That the said commission shall specially inquire into that method of railroad management or combination known as pooling, and shall report to Congress what, if any, legislation is advisable and expedient upon that subject.

I read next the section in the bill proposed by the conference committee on the subject of pooling :

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof, and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Elsewhere in the bill it is provided that the commission of any act which it is provided shall be unlawful may be punished by a fine not exceeding \$5,000.

Now, with regard to the change in the short-haul clause, I have this to say : I do not think as an original proposition the change was a wise one. I do not think it is an improvement of the bill as it left the Senate. I think the Senate bill recognized a principle which was sound, and that principle was that the question of what is a reasonable charge upon freight to a station or from a station is not to be determined by the question of what is charged for freight to or from another station. In other words, the question of reasonable freight charges must vary with the location of the place to or from which the freight is shipped, the volume and character of the business to be transacted going to and from that place. I believe that was a wise provision based upon a sound principle, and I do not think it was wise to depart from it ; and I think that these words which have been inserted about the shorter distance being included within the longer distances are uncertain and ambiguous. I do not think any man knows to-day what they do mean. I think it will greatly trouble courts and commission to decide what they mean.

It is certain that the introduction of these words makes an exception to the rule. It is certain that the bill, as it stands reported by the conference committee, implies that there are some shorter distances for which more may be charged than for longer distances. It is for courts and the commission to find out what those shorter distances are, for, mathematically speaking, every shorter distance is included within the longer distance. But this bill says on this subject that it shall not be lawful to charge more on the same line in the same direction, under similar conditions and circumstances, for a like kind and amount of freights, for the shorter than for the longer distance which includes the shorter. Mathematically speaking, we should say that was impossible. Speaking of the words when put into a statute, we know they must have a construction. I have never yet seen the man who was able to say what those shorter distances were in which railroads were to be permitted to charge more than for longer distances. They are there in the bill if it passes, and the courts here will say what they mean.

But, notwithstanding all this, I stand by the short-haul clause for the purpose of getting legislation on this subject. I am willing to surrender so far my judgment as to what is wise and best. Right here I want to

allude to an objection based upon a possible construction which I have heard urged against this short-haul clause.

I am told that there is fear in many quarters that this construction will be put upon it; that where two or more independent lines of railroad (independent in ownership and operation) contract with each other to forward freight over the entire line so made up, and for each independent link the railroad company owning and operating it to accept a certain proportion of the through freight as its share, that portion which it so agrees to accept under these circumstances will be made the measure of the charge upon freight shipped over its own road or any portion of it. I do not think that such can be the construction of the bill.

Every road must stand by itself. It is upon the company's own road that the short-haul clause takes effect. If a number of independent companies, having independent lines which together form a continuous through route, contract as to the freights which shall go over those routes, then they, as contracting parties, are bound as to freight which is shipped over those roads as to the price, and may not charge more on freight sent under contract between those points for the shorter than for the longer distance; but the share which each road may receive for carrying such through freight does not, in my judgment, furnish the measure by which any one of those independent and independently-operated companies is to measure the rate for other freight upon its own road.

I have said this much to explain the fact that, although I do not think we have improved the Senate bill on this subject, I still take it and stand by it.

But the section of the bill proposed by the conference committee which prohibits pooling under criminal penalties I can not consent to. I would for the sake of getting legislation assent to it if I did not believe in my inmost mind that it was impolitic, unjust, and calculated to embarrass and possibly defeat the beneficial operation of the bill.

I do not think that to justify my dissent I must hold affirmatively that pooling contracts are legal and right. I think the burden of proof is upon them who would make such contracts criminal. Can it be that in the Senate of the United States and in the House of Representatives of the United States crimes are to be made and penalties of \$5,000 a day are to be inflicted, and the parties who propose it are not show why the contracts for which those fines are imposed are illegal or wrong? And to give reasons why I can not assent to such legislation, must I prove affirmatively that such contracts are right and are according to the common law? It is for those who say that pooling between railroads shall be criminal to show that such arrangements are either opposed to the common law, condemned by the common law, or they are so far wrong in principle as being opposed to public policy that it is just and wise legislation to make them criminal offenses.

Mr. President, we must get back to definitions. I apprehend that these contracts, which are known as pooling contracts, are entirely misunderstood in character, in purpose, in results, and it is the evil significance which attaches to this unfortunate word "pool," which railroads never apply to these contracts, which has created an unreasonable prejudice in the minds of the people of the country, upon which it is sup-

posed that without investigation and without affirmatively showing anything wrong or improper in these contracts, we are to brand the making of them as criminal. It is said that "that which we call a rose by any other name would smell as sweet," but the converse of that proposition does not hold true. These contracts under other names would never be supposed to be against the public interest. Railroad companies have tried to escape from the fateful influence of that name. They have called such contracts what they more properly are—co-operation contracts for traffic unity—but without avail; that unfortunate name is fastened upon these contracts. But I do not propose, therefore, to strike at what can not be shown to be wrong, improper, or against the public welfare or opposed to public policy.

What is a pool? What is a pooling contract? It is simply an agreement between competing railroads to apportion the competitive business; that, and nothing more. I repeat it; it is an agreement between competing railroads to apportion the competitive business. It does not touch the local business, it does not reach it; it has no reference to it. The local business is left to each individual company. It is non-competitive. A pool has nothing to do *per se* with making rates.

And right here I want to call attention to a glaring inconsistency in this proposed legislation. The proposed prohibition of pooling does not prohibit the railroad companies from making rates. Indeed the whole bill compels agreements between competing roads for the making of rates. The section does not propose to prohibit a hard and fast agreement between railroads to maintain rates. Indeed it almost compels it. It does not propose to interfere with any other means which railroads may adopt, which are inducements to the railroads themselves to maintain rates. All that it does propose to do is to make criminal the apportionment of freight between competing railroads, or the division of earnings by competing railroads. With that criminal clause in the bill, it would still be open to railroads to enter into any other kind of contracts which they might invent for the purpose of maintaining rates agreed upon. It would be open to competing roads to put a sum of money in the hands of a commissioner or an arbitrator to be used as penalties, as liquidated damages to be recovered by the other companies of any company that should violate the agreement to maintain rates. It does not apply to a hundred means by which railroad companies may in some way make it for their interest to maintain the rates which they themselves have fixed and have agreed to maintain legally under this bill. Is it not pretty remarkable legislation that there should be left the right of competing roads to fix rates jointly for competitive business; that there should be left the right to agree to maintain those rates and not to cut or vary from them; that there should be left free to them every means to protect themselves against the violation of those agreements, except just this matter of apportioning between them the competitive business of the roads or the division of joint earnings?

It may be said that perhaps it is not so bad a measure after all if it leaves all those things open to the railroads, but the inconsistency of it is intensified many times.

I say, then, that the thing which it is proposed to make criminal is contracts for the pooling of freights of different and competi-

tive railroads or the division between them of the aggregate or net proceeds of the earnings of such railroads. Now, I want to read a word from Mr. Nimmo's report, which is called the report on the internal commerce of the United States in 1879, showing what a pool really is. And I want to say a word about Mr. Nimmo, whom I shall frequently quote during this discussion ; I shall not quote railroad presidents, with a single exception or two ; I shall not quote pool commissioners ; I propose to fortify what I have to say on this subject by quotations from men who have studied this question from an independent standpoint and with no interest to favor railroads. Mr. Nimmo, Chief of the Bureau of Statistics until 1884, an able statistician and a careful student of political problems, who in the nice adjustment of offices to civil service reform principles by the present administration was asked to make way for another man. Mr. Nimmo is certainly good authority by reason of the attention which he has given to this subject. As far back as 1879 he said :

The use of the term "pool" as a designation of the agreements entered into between railroad companies for the apportionment of traffic, or the receipts from traffic, is of recent application. The term has usually been applied to a game of *chance*, in which all the players contribute towards making up the stake or pool, and the winner in the game gets the whole, whereas what is now known as a railroad "pool" is simply an agreement entered into between companies for the apportionment or division of the traffic between roads engaged in competitive traffic. By this arrangement they take no chance, but seek to escape the chances that, under unrestrained competition, they may be able to secure less than what they deem to be their equitable share of traffic and reduce to a certainty the share of the traffic which they shall secure. The main object, however, is to avoid the great losses inevitably resulting from wars of rates. In its application to the apportionment of division of railroad traffic the meaning of the word "pool" appears to be, in a double sense, the reverse of its ordinary significance in its application to games of chance.

Again, in 1881, he said :

A railroad freight pool is simply an agreement that, at competing points, the several contestants for traffic shall be allowed a certain percentage of it, or of the receipts therefrom, to be determined either by arbitration or by a convention of the representatives of all the competing roads. When such an agreement is faithfully observed, it is found to be comparatively an easy matter to decide as to the rates which shall be charged and to maintain them.

Sometimes the same authority agrees upon and fixes the rates, and sometimes it does not; the same authority which apportions or divides the traffic. The maintenance of rates is in no sense *per se* part of the pooling contract, and it is not so treated in the bill, as I have shown. It is not so treated in the bill which prohibits and makes criminal only a thing independent of and distinct from the making of rates and the agreeing to maintain them.

Now I call attention for a moment to Judge Cooley's explanation of a pool, which is to be found upon page 2 of a recent pamphlet by Judge Cooley in 1884, entitled "Popular and Legal Views of Traffic Pooling." He says:

In this country the method of pooling seems to be for the several contracting parties to create some common authority upon which will be conferred the power to establish and change rates for the transportation of property within a certain territory or over a certain line, and also to apportion the business between them. The apportionment will be made upon a consideration of what the companies severally would be likely to obtain under the operation of free competition, and it will be changed from time to time if found to be relatively unjust. The feature of arbitration upon controversies arising between the contracting parties will also be prominent in the arrangement.

* * * * *

The avowed purpose in pooling is to avoid ruinous competition between the several roads represented, and the unjust discrimination between shippers which is found invariably to attend such competition.

Would you believe that in a bill largely and mainly aimed at the prevention of unjust discrimination a clause would be found making criminal that practice to which railroad companies have resorted to prevent unjust discrimination?

A pooling contract is based—that is to say, the percentage of freights or the portion of freights which each company agrees to be satisfied with—is based upon the results of traffic for several years under free competition; and it is a strange thing that, however fierce the competition, the amount of competitive traffic which a road secures remains practically the same; whether competition be fierce or whether there be little competition, the amount of traffic which a competing road secures is practically the same. This apportionment of traffic, then, is based upon what returns for some years under open competition, when competition has been fierce and when it has not been fierce, have been secured by each competing road.

The fact to which I have alluded shows that there is for every competing railroad its natural, normal share of the competitive business, business which will come to it whatever the competition may be. A competing railroad company may be justified in saying that such share of the competitive business belongs to it so long as it maintains only reasonable rates for doing it. It is upon that theory that the apportionment is made. If it constitutes an agreement for the prevention of competition, for non-competition, it is this, that the railroad company will not fight for more than its natural share of the business. Its object is, as I have shown by the quotation from Judge Cooley, to remove the inducement which exists for railroads to enter into ruinous competition or into unnatural strife for business which does not belong to them.

It may be said that the purpose of pooling is to maintain and establish equal and stable rates. What is this bill for? What has been the purpose of the committee in this bill? They have heard from all over this land that one of the chief and greatest causes of complaint against railroads was the fluctuation of rates, rates which were up to-day and down to-morrow, up for the retailer and down for the wholesaler, and fluctuating up or down as the caprice of the railroads or the emergencies of the competitive strife should require. Look at the report of the committee, look at the testimony before the committee, and you find that one of the main objects of this bill is to make rates stable and permanent when they have been found to be reasonable. I challenge any man to show that the object or purpose or faithful observance of a pooling contract—by which I mean the apportionment of the competitive traffic, or of the earnings derived from such competitive traffic—can be anything else except the maintenance of stable rates. It is supposed, I think, on the part of the public, that in some way these railroad pools fix unreasonable rates.

I challenge proof of it. I heard petitions presented at that desk this morning praying for the passage of this bill. For what purpose? To prevent excessive rates, discriminations, and pooling. It shows the utter and lamentable ignorance of what pooling contracts

really are. There is not a man who ever studied them, there is not a man who ever investigated their operation, but what will tell you that the main purpose of them is to prevent discriminations; and yet here we have a bill in which we propose to make criminal the means which the railroad companies adopt to prevent discrimination. Others may agree to it for the sake of getting legislation; I will not.

I know this is no place to discuss a legal question thoroughly and exhaustively, but I say the advocates of the prohibition of pooling can not maintain that these contracts are objectionable under the common law, certainly not that they are illegal at common law; nay, more, I would with confidence stand before the Supreme Court of the United States, or the supreme court of any of the great States of this country, and undertake to maintain that, one thing being assumed, such contracts are legal and would be enforced by the courts, and that one thing to be assumed is that the rates shall be reasonable.

A pooling contract, a contract to apportion between competing roads the competitive business for which reasonable rates have been agreed on I undertake to say, in my judgment, will be held valid at common law.

I am not unmindful of the general principle that contracts in restraint of trade are held to be illegal; that is, in the sense that they will not be enforced by the courts. I am not unmindful of the fact that combinations wholly to prevent competition in trade would be held illegal by the courts to the extent that they would not be enforced, that courts would say to the parties to such contracts, "These are voluntary agreements of yours; you can get no sanction from the courts, because we think they are against public policy." That is what is meant when it is said such contracts are illegal.

But contracts in partial restraint of trade have been held to be valid for the last one hundred and sixty years in all the courts of England and America. And I hold that combinations for the partial prevention of competition are governed by the same rules as govern contracts for the restraint of trade, and that contracts only for the partial restraint of competition will never be declared to be illegal and void unless it clearly appears that they are injurious to the public interest. The law of this country is well stated by the commentator in *Smith's Leading Cases*, commenting on the great case of *Mitchell v. Reynolds*, decided, I think, in 1711, thus:

The present doctrine is that while contracts in total restraint of trade are void, yet if the restraints imposed be partial, reasonable, and founded on good consideration they are valid and will be enforced.

And Judge Bradley, of the Supreme Court of the United States, held in that very same language, in a case reported in 20 *Wallace*, that that was the doctrine of the common law as it exists in this country. You can not, therefore, jump to the conclusion, because a contract for the division and apportionment of freights between competing roads may in some sense to some extent regulate or limit competition, that it is illegal. I undertake to say that, with the exception of one or two cases to which I will allude, in this country there can not be a case found where such contracts have been held to be illegal unless they were for the total prevention of trade within certain limits, or unless they related to the control of a production like coal or iron, as well as the carrying of

the same. It depends on whether the prevention aimed at is total, unreasonable and injurious.

As I said, the common law of England certainly is that such contracts are legal. The common law of England and America is the same. And yet the English courts, law and chancery, each hold just such contracts as it is proposed to declare illegal and criminal to be valid, and enforce them. I want to put this question to the Senate of the United States: England has had as much experience in railroads as we have; it has had the experience of thirty years of legislation; it has experienced all the evils; it has tried all the evils; it has tried all the remedies for abuses; and does the Senate of the United States propose deliberately to-day to say that arrangements which English courts with all this experience hold be legal and valid shall subject the parties practicing them to criminal penalties of \$5,000 a day? I cite from the last legal treatise on railway law, *Wood's Railway Law*, volume 1, published in 1885. The author is an approved law-writer, both in this and other branches of the law. I read from section 207, page 590:

SEC. 207. Pooling arrangements. In England it is held that "pooling" contracts, or arrangements between competing roads by which they agree to divide their joint earnings upon certain classes of business, or even their entire earnings, are legal and valid, where it does not appear that the interests of shareholders or of the public are prejudiced thereby. But the English authorities upon many questions connected with railway law are hardly safe guides upon similar questions in this country, for the reason that their railway system is essentially different from ours, and such companies are under the direct and immediate supervision of a court of railway commissioners, which by statute is invested with authority to hear complaints and make orders which relieve the public against any particular oppression or illegal action of the companies; yet upon this question such authorities are entitled to weight, because they are predicated upon the common law, and not upon statutory grounds.—*Wood's Railway Law*, 1, page 590.

The two leading cases in which the English courts held that such contracts were legal are on all-fours with the contracts which it is proposed to prohibit and make criminal by this bill. One was for a division of earnings; one for a division of traffic between competing roads running between two great points. Now I want to read what, when the case was tried at law, Judge Campbell said to the Court of Queen's Bench:

The question, then, is whether the agreement is void in law.

That agreement was this:

Here two groups of railway companies being respectively the owners of independent continuous routes from London to Edinburgh, the west route and the east coast route, agreed to divide the profits of the whole traffic in certain fixed proportions, calculated on the experience of the past course of traffic.

They agreed to divide the whole traffic.

Lord Campbell says:

The question, then, is whether the agreement is void in law. As it has been clearly settled that an agreement to withdraw opposition to a railway bill for a pecuniary or other consideration is not illegal, the agreement in question would only be void in case it was illegal upon other grounds, such as those suggested on the part of the defendants—that it was injurious to, and therefore in a legal sense a fraud upon, the public or the shareholders. The defendant's counsel contended that it was injurious to the public by giving, in effect, a monopoly to the plaintiffs, and thereby depriving the public of the benefit that might be derived from competition.

That bugbear of free competition was invoked there as here.

If this were so, and the parties proposed by their agreement to endeavor to prevent competition generally, there might be weight in the objection; but the effect of the agree-

ment is only that the one company shall not compete or interfere with the other upon the particular line mentioned in the agreement; this is no more illegal than it would be for two persons engaged in trade that one shall not exercise his trade nor compete with the other within a particular district.

I shall not read further, but I will say that it having been settled that such contracts are valid in England, are held to be not injurious to the public, not against public policy, this law writer reviewing the whole question of decisions in America comes to this conclusion:

It is believed that, except when prohibited by statute, contracts for "pooling" earnings by rival lines, when made in good faith for self-protection, and which do not result in the creation of a monopoly injurious to the public, are valid and not obnoxious to the charge of being opposed to public policy.

Judge Stevenson Burke (I said I should quote but few railroad authorities, and I quote Judge Burke because he was an eminent judge before he became a railroad man) says:

In England parliament has established a railway commission and sanctioned by law contracts of the character and kind under consideration, but before parliament acted upon this subject the English courts held such contracts valid.

And he closes his argument for the legality of legal pooling contracts in these words:

Many similar quotations might be made, but the single point which I set out to maintain is that such traffic contracts or arrangements honestly and fairly made in the interest of the public and of the shareholders of railway companies, are not only not void as against public policy, but they are in all respects commendable, promotive of public and private interest, and conducive in all respects to the public welfare, and, therefore, of necessity lawful.

Judge Cooley in a very exhaustive work, from which I have already quoted "Popular and Legal Views of Traffic Pooling," goes thoroughly into the question. He says:

The suggestion of pooling, though, likely, perhaps, to occur anywhere, comes to us from England, where pooling contracts in the railroad business and others of a semi-public nature have been held not to be illegal, both when they were made on the basis of an equal division of profits and where the basis was a division of business between the contracting parties.

Judge Cooley in his argument clearly maintains that such contracts ought not to be held illegal in this country, but he says it is impossible to tell what the courts may do on the subject, as the question is still an open question.

I should not be treating this subject fairly if I did not admit that there were two cases decided in the State of New York in 1847, which seem to be conclusive so far as that law of the State is concerned, and until they are overruled it is there held that such contracts are against public policy and therefore void. Those are the only two cases. They have not escaped criticism. They have been very severely handled by other courts, and it is more than probable that they would not be followed.

I will read what Judge Cooley says about those cases. First, let me say, however, that such contracts when executed have always been held to be good by the courts of the United States. Judge Nelson in the circuit court in Massachusetts, and Judge Matthews in the circuit court in Ohio, have explicitly decided that when once executed the law would compel a party who had in his hands any money which, under the contract, should be paid to another party to pay it over. It may be said

that the doctrine of estoppel comes in there, but the doctrine of the legality of contracts was raised in those cases, although it was not specifically passed upon by the judges who decided them. Contracts for the pooling of business and receipts between continuous roads—roads forming a continuous line—have been repeatedly held to be good in this country.

Now, I come to what Judge Cooley says about the two New York cases, referring to the class of cases to which I have just been alluding. He says:

Before either of these cases was decided it had been held by the supreme court of New York (in 1847) that a contract between the proprietors of canal-boats for fixing rates and for a division of net earnings was void, though the object was expressed to be "to establish and maintain fair and uniform rates of freight and to equalize the business of forwarding on the Erie and Oswego Canals among themselves, and to avoid all unnecessary expenses in doing the same." The argument of the court is brief, and is summed up in two short sentences: "The object of this combination was obviously to destroy competition between the several lines in the business engaged in. It was a conspiracy, between the individuals contracting to prevent a free competition among themselves in the business of transporting merchandise, property and passengers upon the public canals." "It is a familiar maxim that competition is the life of trade. It follows that whatever destroys or even relaxes competition to trade is injurious if not fatal to it."

I will not stop to read the decision in the other case because it followed the decision already referred to. Judge Cooley continues:

These cases have not passed entirely without criticism in this country. They were cited to the Supreme Court of Wisconsin not long after they were made, and were there dissented from in very vigorous terms. Referring to the maxim that competition is the life of trade, Judge Howe, speaking for the court, said that it "is one of the least reliable of the host that may be picked up in every market place. It is in fact the shibboleth of mere gambling speculation, and is hardly entitled to take rank as an axiom in the jurisprudence of this country. I believe universal observation will attest that for the last quarter of a century competition in the trade has caused more individual distress, if not more public injury, than the want of competition. Indeed, by reducing prices below or raising them above values—as the nature of the trade prompted—competition has done more to monopolize trade or to secure exclusive advantages in it, than has been done by contract. Rivalry in trade will destroy itself, and rival tradesmen seeking to remove each other, rarely resort to contract, unless they find it the cheapest mode of putting an end to the strife." And it seems to me not a little remarkable that in the case of *Stanton vs. Allen*—

In which I did not read the opinion of the court—

it should have been urged against the agreement that its object was to exempt the standard of freights, etc., from the wholesome influence of rivalry and competition. For it is very certain that because of that very purpose—because they did tend to protect the party against the influence of rivalry and competition—courts of law have upheld like agreements in partial restraint of trade ever since the case of *Mitchell vs. Reynolds*.

Judge Howe was afterwards Senator Howe, and I need not say to Senators who served with him that he was an exceptionally good lawyer.

Those New York cases decided in 1847, thus criticised and dissented from by Judge Howe, may have been cited in the English cases; at least they were decided long before the English courts held precisely the opposite doctrine. Those two New York cases are the only ones in this country on which, as it seems to me, any expectation that our courts will hold such contracts illegal can be based.

Contracts for the division of competitive business of railroads, or of the earnings thereof, are not agreements to enhance or depress prices—are not agreements to control production, or the market for certain products—as in case of agreements to limit the output of coal or iron, or the supply of coal, or iron, or salt, or other commodities. Contracts for

the apportionment of traffic between competing roads are easily distinguishable from the class of cases to which I have just referred.

I must not omit a *dictum* of Judge Deady in the circuit court in Oregon upon this very point, for although a *dictum* it is significant. The case is stated and his opinion quoted in full in the report of the Committee on Interstate Commerce, pages 121, 122.

The State of Oregon passed a law conforming as nearly as the circumstances of the case would admit—that is, as State jurisdiction would admit—to what is known as the Regan bill in Congress. It was called in Oregon the “Hoult law.” A receiver who was to manage a road in Oregon went to Judge Deady, of the circuit court, to know what he was to do in view of that law.

The Senators from Oregon will recollect the case undoubtedly. Judge Deady was the judge who held the court to which the receiver applied. He said that, as regarded this matter of not making any pooling arrangements, he did not think that the law was applicable, because the roads which the receiver was managing were not “different and competing roads,” the language being the same which is used in this conference report bill, but that one was a supporting road to the other, and therefore he did not think that the receiver need trouble himself as to what the construction of that clause of the statute should be, but he said more—he went out of the way to say it, showing what Judge Deady would decide when such a contract was brought before him:

Pooling freights or dividing earnings is resorted to by rival and competing lines of railway as a means of avoiding the cutting of rates, which, if persisted in, must result in corporate suicide. It is not apparent how a division of the earnings of two such roads can concern or affect the public so long as the rate of transportation on them is reasonable.

Sound common sense, if not sound law. I apprehend that it will be found to be sound law.

But I want to refer to the report of this very Committee on Interstate Commerce on the subject of pooling. It is not very long since this report was made. What did the Committee on Interstate Commerce think on this subject as to whether pooling should be prohibited under criminal penalties? When they reported the bill originally to the Senate, on page 200 of the report, they said:

In view, however, of the active competition which exists at the great commercial centers, the successful enforcement of legislation requiring the operation of the entire transportation system upon a basis of fixed rates would seem to depend upon a general predetermination of the rates to be established by the carriers interested. It seems necessary, therefore—

“Necessary,” the committee said then—

to leave a way open by which such agreements can be made, in order to avoid the constant friction that would otherwise be occasioned.

They said it in view of this very bill and of its provisions, which it is now claimed may do away perhaps with the necessity of pooling.

If competition is to have full sway, as it does now, the constant changes it would necessitate would render it impossible to maintain fixed rates, just as it is now. It should be understood, therefore, that a statute requiring the posting of rates and prohibiting changes without notice must of necessity operate in restraint of competition if enforced.

The reasons of the witnesses who wish to have pooling prohibited may be divided in this way, and about equally divided:

First, pooling prevents competition.

Second, it encourages the building of new railroads.

Third, it produces unjust discrimination.

The latter may be dismissed; for surely we can not strike at pools because unjust discriminations have been the result of not observing the pooling contract. What we propose to do in the future, if investigation shall develop that to be the wisest thing, is to legalize and to regulate pools. That will compel their observance, and I undertake to say that there was never discrimination in this country by parties to a pooling contract when the contract was observed. It is only when the contract is broken that the discrimination comes. We lay aside, then, that objection; it is not a valid objection; the fact is that the non-observance of the practice results in discrimination.

Then these two reasons, one that they prevent competition, and one that they encourage the building of new railroads, do not agree very well, because the building of new railroads is competition, the fiercest kind of competition, the worst kind of competition, competition which the Government, if it had the power, ought to put its hand upon; and everybody who will think a moment about it will agree with me in this.

Take this instance: Here are two railroads, we will say—I do not know whether there are, if not there soon will be—between here and New York. We will say, for illustration, that each one of them cost \$10,000,000 to build. What is the result? There is so much business between Washington and New York. That business must pay if the railroad is to be fairly remunerative—and I apprehend it is for the welfare of this whole country that railroads should be fairly remunerative—that business must pay enough to pay operating expenses, all fixed charges on both roads and reasonable dividends upon the stock capital of each road. Say it is \$20,000,000, each road costing \$10,000,000, and all represented in capital stock, so that after the operating expenses and fixed charges are paid it takes \$800,000 to pay an 8 per cent. dividend on the stock of each. Then you have got to have out of that business, net, \$1,600,000.

Now, suppose another ten million dollar road is built between here and New York, what then? That is competition. Competition must not be restrained, no matter in what form it comes. What is the result? There is another ten million dollar capital on which \$800,000 more must be paid, in dividends, in addition to paying the operating expenses, and fixed charges out of a business which could just as well have been done by the two roads. There is no more ruinous kind of competition in the world, none more against the public welfare than the building of competing railroads where none are needed. It is that evil which has led to the necessity of these contracts for the apportionment of competitive business.

But about a third of these, fifty men out of the two hundred who said prohibit pooling, put it on the ground that it was against public policy to restrain competition, and the pooling contracts were in restraint of competition, and therefore they were against public policy and should be declared criminal.

As I have suggested, there is a class of people in this country who hold that any competition between railroads is for the public interest. It comes from men usually who want this whole railroad question to re-

volve around their farm, or their store, their mine, their manufactory, or their bank. There are men who would be glad to have their wheat and their cattle and their coal carried for nothing. There are shippers who would rejoice to get secret rates, or pass-rates, if I may use the word, for their freight, and they welcome all competition which puts down prices to unremunerative points. Such individuals gain by such competition, but it is to the injury of every other citizen of the United States; it is to the demoralization of all business; it is the breaking down of all business honesty and lawful trade. There is a competition which is worse than the combination and co-operation of railroads.

I said I assumed in discussing these pooling contracts that the rates were always reasonable, and I challenge proof or fact to show that a competitive rate in this country is unreasonable unless it be relatively so. I agree that there are some cities which say they do not get so low rates as others do in proportion, but that would be a matter for a commission to fix. However, on a question of what is reasonable in any man's estimation, I challenge denial when I say that the competitive rates, the rates for competitive business in this country, are not unreasonably high. Indeed, all rates have gone down under pooling arrangements, both competitive rates and local rates. It is not true, as the petition presented this morning stated, that pooling makes excessive rates, any more than it is true that it makes unjust discrimination.

There is a world of figures which might be introduced for the purpose of proving the fact that under pooling arrangements all kinds of freight have steadily on the average diminished in this country. I remember in the testimony before the Interstate Commerce Committee that question came up as to the Union Pacific. It was admitted that the through rate, the competitive rate, was as low perhaps as could be asked. It was shown that it had been going down steadily year by year, until the managers of the road said they did not know what they were going to do. But it was urged that the local rate had not been reduced as the competitive rate had been reduced. The superintendent of that road, by figures, showed that about the same ratio of reduction had taken place in local freight as in competitive freight.

I take a single table, which I propose to put into my remarks, and only one, and to get it, I confess that I called upon the terrible trunkline commission in New York. I asked them to answer one question, and they did. I say that because it is headed "Trunk Line Commission, New York, December 29, 1886."

TRUNK LINE COMMISSION, *New York, December 29, 1886.*

Statement showing the average earnings per ton per mile by the following roads during the years 1876 and 1885; also showing decrease in earnings per ton per mile during 1885 as compared with 1876.

Road.	1876.	1885.	Decrease in 1885.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New York Central and Hudson River.....	1.051	0.680	0.371
New York, Lake Erie and Western.....	1.099	0.656	0.443
Pennsylvania.....	0.892	0.627	0.265
Pittsburg, Fort Wayne and Chicago.....	0.930	0.580	0.350
Lake Shore and Michigan Southern.....	0.817	0.553	0.264
Michigan Central.....	0.878	0.560	0.318
Average six roads.....	0.957	0.625	0.332

It is not competitive business alone, mind you, that this table refers to. It is all the business of these roads, competitive and non-competitive, through and local, the New York Central and Hudson River, the New York, Lake Erie and Western, the Pennsylvania, the Pittsburg, Fort Wayne and Chicago, the Lake Shore and Michigan Southern, and the Michigan Central. I take those roads because they are roads most directly interested in the movement of freight between New York and Chicago. There are other roads in what is called the trunk-line commission, but these are the ones which I think fairly illustrates the influence of pooling management upon the price of freight.

From this table it will be seen that the average earnings per ton per mile, or what is the same, the average charges per ton per mile of these roads in 1876 was $9\frac{1}{2}$ mills, almost 1 cent per ton per mile; while in 1885, the time during which this trunk-line commission has been in operation, the average had been reduced to $6\frac{1}{4}$ mills per ton per mile upon all the business of these roads, competitive, non-competitive, through and local, and the reduction is equal to $33\frac{1}{3}$ per cent.

MR. PLUMB. Can the Senator supplement that statement by saying how evenly that reduced rate was distributed among the transporters on the various lines of railroads?

MR. PLATT. Of course I can not. I am not saying that there are not abuses in railway management, but I say that you will not reach them by declaring these pooling contracts criminal. I say pooling contracts are in aid of remedying the abuses of which you complain, and I shall show it before I get through, if I have not already shown it.

I might turn the attention of Senators to the statement of Mr. Edward Atkinson in the Century for the present month, where he gives in a table the charge per ton per mile for moving merchandise over the New York Central and Hudson River Railroad in each year from 1855 to 1885.

In 1855 it was $3\frac{1}{4}$ cents per ton per mile in gold. In 1885 it was $6\frac{3}{10}$ mills per ton per mile. This of course includes non-competitive as well as competitive business.

I do not deny that discriminations exist. It is one of the reasons why this bill should be passed. Discriminations exist in spite of pools by the breaking of pooling contracts, not by the observance of them.

Do not, in the name of common sense, declare that criminal which has for its end the purpose which you avow is one of the main purposes of the bill.

I want to look this bugbear of so-called free competition, which it is claimed must not be limited, in the eyes for a few minutes. I have heard the maxim that "competition is the life of trade." I have heard much talk of the so-called law of nature and social life and economic life, "the law of competition and the survival of the fittest." In the sense in which they are invoked, I deny and repudiate them both. There is a competition which is not lawful, which is not legal, which is not honest.

There is a competition which degenerates from true competition, and becomes simply war and strife—war carried on and conducted upon the old maxim that "all is fair in love and war." If by "competition and the survival of the fittest" is meant competition and destruction of the weakest, I say it is anti-Christian; it is anti-republican. I say that that kind of competition which results in the destruction of the weakest, the survival of the fittest, if permitted, would lapse us into barbarism. It would be the old pagan idea—the old despotic idea—that might makes right; that men are ruled by the strong hand, and not by regard for the moral law. It is expressed in that common phrase, "the devil take the hindmost." Talk about such competition being demanded on the grounds of public policy. The sooner governments put an end to such competition the sooner humanity will be free to advance along that upward pathway by which it is to reach its final glorious elevation, the sooner governments will come to that beneficent standard designed by the Creator for the happiness of mankind.

I shall show pretty soon that you can not stop competition. Pooling arrangements do not tend to stop it. Their only province is to regulate it. The regulation of competition is not only not against public policy, but is really in furtherance of the public welfare. But I wish to verify what I have been saying by reference to the opinions of some other men. As I said, I am not going to quote railroad men, except in one instance, on this subject. I want to quote on the subject of what competition is, this free competition which it is said must not be prevented by pooling contracts—on the subject of what it is and what it accomplishes I wish to quote some men who I think will be listened to in the Senate, even if I am not. I quote from the report of Messrs. Thurman, Washburne and Cooley, constituting an advisory commission on differential rates by railroads between the west and the seaboard. I think no man will accuse Mr. Thurman of being a subsidized railroad attorney, or Mr. Washburne, or Mr. Cooley, and I think what they have to say on this subject of competition will have some weight.

MR. EDMUNDS. What is the date of that?

MR. PLATT. The date of this is 1882. They say:

We have found, however, in the course of our investigations, that a species of competition has prevailed from time to time which has brought satisfaction to few persons, if any, and which has resulted in inequalities and disorders greatly detrimental to trade. Such competition exists when the railroad companies, or those who are permitted to solicit business and to make contracts on their behalf, set out with determination to withdraw freights from their rivals and secure them for themselves at all hazards and regardless of gain or loss; and when acting upon this determination they throw to the winds all settled

rates, and in the desperate strife for business offer any inducement in their power which will secure it. The country not long since had experience of such a season, and everywhere we listened to complaints of the injury which legitimate business suffered from it.

Again—

Under such circumstances persons were favored and localities were favored, when the object to be immediately accomplished seemed to require it—regardless of the just maxims of legitimate business, and of the rules of the common law, which enjoin upon common carriers that they shall deal with all customers upon principles of equity and relative fairness. Legitimate business, it was said, necessarily passes into an unsettled and speculative state while this condition of things exists; safe and close calculations are impossible; transportation becomes cheap, but neither producer nor consumer is certain to reap the profit, for the middlemen can not calculate upon the steadiness in low rates, and as he takes the risk of their being raised upon him, so he is in the best position to appropriate the benefit while they continue. Meantime, railroad profits disappear, dividends cease to be paid, to the great distress of thousands who rely upon them for their living; and every interest in any degree dependent on railroad prosperity must participate in the depression and disaster which accompanies the ownership of railroad shares.

The mere statement of these results is sufficient to show that this is not what in other business is known and designated as competition. Competition is the life of trade, but this is its destruction; competition brings health and vigor, and secures equality and fairness, but this paralyzes strength and makes contracts a matter of secrecy and double dealing.

In the light of that are you going to declare as criminal these contracts, these arrangements, which nobody will deny have been resorted to by the railroads simply for the purpose of preventing this kind of competition described by Judge Thurman and Washburne and Cooley?

I am going to venture to quote a little from what Mr. Charles Francis Adams says on the subject of competition. He is a railroad president. Do not believe him if you do not want to, but I quote him because before he became a railroad president he was a most approved student of the railroad problem from a scientific standpoint. Now, in the light of his added experience, if you please, he said, in an argument before the Committee on Commerce of the United States House of Representatives on the bills to regulate interstate railroad traffic.

What, then, is this mysterious underlying cause of which the railroad abuses I have referred to as so notorious are the outward manifestations? With all possible confidence I assert that it is excessive and unregulated railroad competition. This and nothing else. In saying what I am about to say, let me first premise that I have no intention of making myself ridiculous to you by attempting any general attack on the great laws of trade. I fully recognize their efficiency; and as respects railroads, I concede at once all the wonderful results that have been accomplished through the free operation in this country of the particular law of competition. But all that has nothing to do with the present question. Competition is a great thing, but it works in rough ways. In other words, every abuse in the railroad system, so far as the interstate commerce of this country is concerned, can be shown to be the direct, the logical, the inevitable outcome of unregulated and desperate competition, and a mere outward skin symptom of it.

Oh, yes, prohibit these arrangements by which the railroads seek to prevent this illegitimate competition, declare them criminal, if you will, but do it with your eyes open.

I wish to take Mr. Nimmo's report and see what he says about it, Mr. Nimmo has made this an eight years' study. If anybody wants to get full information on the history and effect of pooling all he has to do is to read Mr. Nimmo's reports. He will find an almost exhaustless store-house of facts. Mr. Nimmo says:

During the struggles referred to success waited upon intrigue and false representations. The freight agents deceived the merchants, and the merchants deceived the freight agents. For several years the railroad transportation interests of the country ran

at loose ends. The contest being carried on independently of leadership and without method, lost the name of competition and ended in demoralization.

And to-day it may be said that in some parts of this country, owing to the non-observance of apportionment contracts, just that condition of things exists which calls most loudly for the interposition of legislation.

Going on, Mr. Nimmo says:

It appears hardly necessary to observe that such a contest, involving results in the highest degree detrimental to the interests of productive industry, of commerce, and of transportation, had in it none of these conservative elements of legitimate competition which attach to ownership and to personal responsibility for results.

Let me quote a gentleman whom I regard to be the most thoroughly informed student of the railroad problem in the United States, a man who is beyond the suspicion of having an interest in railroads, a man who is so close to the industrial interests of this country that he was selected as labor commissioner of the State of Connecticut. I refer to Professor Hadley, of Yale College. I wish to read a little of what he says about the kind of competition. I read from the May number of *The Popular Science Monthly*, from an article entitled "The Difficulties of Railroad Regulation:"

While railroad competition has been in some respects a beneficent force it can not be trusted to act unchecked. To the business community regularity and publicity of rates are more important than mere average cheapness. Business can adjust itself to high rates easier than to fluctuating ones. And railroad competition of necessity makes rates fluctuate. It tends to bring them down to the level of operating expenses, regardless of fixed charges. If it acts everywhere as in the case of the New York Central and West Shore it leaves little or nothing to pay fixed charges, and means ruin to the investor, followed by consolidation. If it acts at some points and not at others, those points which have the benefit of competition have rates based on operating expenses, while the less fortunate points pay the fixed charges. Then we have discrimination in a dangerous form.

As long as competition exists, there is no escape from this alternative. If it exists at all points, it means ruin; if it exists at some points, it means discrimination.

I read from Professor Hadley's book on *Railroad Transportation*, published in 1886, a book which I commend to every student of the railroad question. Referring to combinations to prevent competition, mainly of combinations among laborers, and incidently of combinations by way of pools to prevent indiscriminate and illegal railroad competition, he says:

While the experiments in State socialism have been so often bad, there has been a tendency in a great many cases to go too far to the opposite extreme, and to call everything bad which restricted competition in any way.

That is the only ground upon which you propose to make these pooling contracts illegal:

Courts and legislators have tried to stop the growth of industrial monopoly by shutting their eyes to industrial facts. They have tried to prohibit such combinations altogether, the courts saying that they would not enforce contracts in restraint of trade, the legislators trying to render it illegal to make such contracts.

They could not stop such combinations because they were a necessity of business. The result of trying to prohibit them was what always happens when you try to prohibit a necessity; the worse features of the system were intensified. Secret combination was substituted for open; short-sighted and arbitrary policy was encouraged. By prohibiting the whole system the courts deprived themselves of the power of dealing with specific evils, such as secret favors or arbitrary discriminations.

I repeat what I said a little while ago; the only competition which these contracts for the apportionment of competitive business seek to prevent is the competition which discriminates between individuals, by

which railroads cheat one another, and by which they violate the common law of England and America.

Competition in railroad transportation differs from every other kind of competition in the world. I do not say that it is not to be judged by the same legal rule, but I say in essence and in character it is different from competition in any other business. In the first place, it is not competition in trade. The railroad buys nothing of the producer; it sells nothing to the consumer. It simply carries—it distributes; that is all. Contracts in restraint of trade may operate the same with reference to contracts between common carriers as between merchants; but the two kinds of business differ in character. It differs from every other business, because whatever the result of the competition and the rivalry the railroad stays. Ricardo is the great promulgator of the doctrine that competition is the life of trade; but he writes from a banker's standpoint. In banking capital is circulatory. If competition drives it out of the banking business it may go into the manufacturing business. But the railroad stays whatever the result of the competition. If "competition and the survival of the fittest" means the physical removal of the weakest, the pretended law is inapplicable, for you can not remove the railroad. When its iron rails are laid down from point to point there it stays; and however many companies may be bankrupted by competition there stands another company ready to take its place and to be bankrupted in turn. It is not so on the highways. It is not so on the water-ways. If two rival coach proprietors disagree and one is bankrupted the coaches can go elsewhere and run on other roads. If rival steamboat lines disagree, and by competition one is bankrupted, the boats can go elsewhere. The world is full of free highways, but the railroad is not a free highway.

[JANUARY 6, 1887.

Resuming, on reassembling of the Senate January 6, Mr. Platt continued:

Mr. President, I regret that I consumed as much time as I did yesterday, and yet perhaps there is no reason why I should apologize in view of the fact that probably never in the history of governments was a bill under consideration which would inevitably affect, either directly or remotely, so great financial and industrial interests as this bill. It will reach every hamlet, every industry, every laboring man, and every laboring man's family in the United States with its results, either for evil or for good; and therefore I think that I need not apologize for the time which I have already taken and shall take in discussing it. I will endeavor, however, this morning to be brief.

I endeavored to show yesterday that contracts which are called pooling contracts were much misunderstood. I undertook to show that, though abuses may have attended the administration and performance of those contracts, there was nothing inherently wrong in them, nothing inherently injurious to the public welfare. I maintained that before the Senate and House of Representatives should stamp and brand them as crimina. somebody should show that they were inherently wrong, and

that any evils or mistakes which had arisen in connection with their execution were merely incidental and not a necessary result of the system.

I undertook to show that they were recognized, sanctioned, and enforced by the decisions of English courts, and that it was at least an open question in this country whether they would not be sanctioned by our own courts upon full consideration. I undertook to show that they were not injurious to public policy, not injurious to the public interests, by combating the doctrine that every kind of competition in trade and business is for the public welfare and the public interest. I tried to say—not expressing it as well as I would like to have expressed it—that unnatural illegal competition is always opposed to the public interests, and that if there is any such law as has found popular expression in the phrase “competition and the survival of the fittest,” it is a law which encourages only that competition which results in the best and the permanence of the best. I claimed that these contracts in their nature and in their proper execution were not opposed to the competition which has for its object the encouragement of the best and the permanence of the best.

When I gave way to a motion to proceed to executive business I was speaking upon this proposition, that the business of the railroad carrier was unlike any other business so far as it was governed and influenced by the law of competition. I had shown that the railroad was not a free highway, not a highway upon which all the citizens of the United States are free to put their carriages and transport goods; that for that very reason the law of competition and the survivalship of the fittest was not applicable to it, for that involves the physical removal of the weakest, and you can not remove the railroad.

You may bankrupt the management of the road, but in other business when you bankrupt the management the capital is destroyed and other capital goes on relieved for the time from the pressure of competition; but when you destroy the business management of a railroad the capital is not destroyed. The capital is mainly invested in the road. There it remains. There comes to take the place of the bankrupt corporation another corporation which utilizes the capital already invested; and the result is, differing from results in any other kind of business (and the history and experience of railroad management in this country shows it), that the newcomer inflates the capital, and after bankruptcy there is more capital upon which dividends must be paid than there was before competition produced the bankruptcy; that railroad capital always grows by what it feeds upon. It is probably not out of place in this discussion to speak of the evil which results from the inflation of railroad capital.

I refer only to the acknowledged fact that when competition has destroyed one competitive railroad corporation another takes the place of the vanquished with a larger capital, to be in turn destroyed, or to be in turn the master of the other competitor.

There is another sense in which interstate commerce is not like any other business so far as it is affected by the law of competition. The business is largely of a public nature. As I said yesterday, it is the discharge of a public duty which the railroad engages in, certainly in the building of its road. It follows as a matter of course that the rail-

road company, in so far as it is discharging that part of its duty which is public, must discharge it as the state would discharge it; that in that respect it is properly limited to the same laws of competition, the same laws of business, the same methods of regulation and of doing business to which the state would in justice be limited and to which it would in justice be subjected.

The railroad company assumes in this business a portion of the power and duty of the state. Now suppose the United States was operating the railroads, as they are operated in Germany, and to some extent in other countries of Europe, will any Senator say that the United States should enter into the kind of competition which railroad companies are inevitably forced into when there are competing roads and competing traffic and no pooling? Will any Senator say that a state operating railroads should, under any circumstances, allow rates to be put down to a point where they are ruinously low or practically unremunerative?

I apprehend that the Senator who should claim that it was for the public welfare and the public advantage that a state operating a railroad should carry freight for less than cost or for a sum which barely paid cost, operating expenses and fixed charges, would be told that while certain favored citizens who wanted to ship certain commodities over the state railroads might be benefited by such a policy, the remainder of the public was taxed for the benefit of the few. And that argument holds just as good when private corporations are managing the railroads as it would if they were managed by the state.

There seems to be a great misapprehension in some portion of the public mind as to the question of what are unreasonable rates. Some people never apply that term except when the rates are too high. They have no idea that the rates can be too low. I maintain that a rate for carrying freight which only pays operating expenses and fixed charges is as much unreasonable as a rate which is too high, and which will pay too large a dividend upon railroad property. We are here to do justice by the railroads and by the people. We are to hold the scales of justice with even hand, and not act from prejudice or act wantonly. An unremunerative rate is just as unreasonable and just as injurious, though in a different direction, as an unreasonable high rate.

The railroads of this country must see to it, if the public welfare is to be promoted, that remunerative returns are received from freights and passengers. I do not stop to say what remunerative rates are. I do not stop to speak of this great question which comes up when that is to be considered as to whether remunerative rates mean such rates as will pay dividends upon the inflated capital of the railroads of the country. That is out of this discussion. I mean to say that it is the duty of railroads discharging a public duty as well as a private duty to see to it that if possible the business which they do yields remunerative returns to the capital investment, and that you can not endanger the public prosperity or destroy the public welfare any quicker than to establish rates or to let rates be established by competition which will not give fair remuneration to the capital invested in railroad enterprises. The whole history of the country shows it. I have seen two railroad-rate wars which resulted in such demoralization of business in this country as to produce what might have been called two years' continuous panic.

Unremunerative rates injure first the investors in railroad securities, next railroad employees, next co-related industries, and lastly all industries; and it is the last wave of the enlarging circle of disturbance that is most disastrously felt. The injury produced by unreasonably low rates is finally felt by every citizen. The toiler in remote hamlets feels the baneful effects of the general depression, but usually ascribes the result to every cause but the primary one, which is the railroad-rate war and the unreasonably low rates produced thereby. The interests of the people are so closely united that an injury to one branch of business is felt by all. Here truly an injury to one is the concern of all. How appropriate in this connection the language of inspiration: "We are many members, yet but one body; and the eye can not say unto the hand, I have no need of thee; or again the head to the feet, I have no need of thee."

I think people misapprehend the question in this respect. It is within the power of one railroad president to practically depress the entire business of the nation; and the West Shore Railroad and its management is a recent example and illustration of what I say. For this reason railroads are not subject to the same law of competition as other kinds of business are.

There is another reason, which is seldom alluded to. The competition, mark you, which it is claimed must not be prevented is the competition between competing railroads for competitive business. The proposition is no matter what that competition is, no matter what the result of it is as to the lowering of rates or the discriminations which ensue, it must not be prevented, and therefore pooling must be prohibited. It is to that proposition that I desire to hold the discussion of this question.

The reason which I last alluded to is this: When rates are forced below the remunerative point, how does the railroad manager and the railroad president attempt to make money? Not from the legitimate business of the railroad, but by stock gambling. Unremunerative rates inevitably substitute stock gambling for the legitimate profit of business, substitute the effort to get money by stock gambling for the effort to earn it legitimately by railroad business. It is inevitable; it is in the nature of things.

It is not the remunerative railroad that furnishes the business for the stock exchange. It is not dealing in the remunerative railroad securities that produces panic, that makes millionaires and makes paupers in this country. The inducement to this business comes from the fact that by strife for competing business railroad managers are unable to make profit in a legitimate way. And so I say that the law of competition claimed, though it may be just as to other business, is inapplicable to the business of the management of railroads.

But, Mr. President, contracts such as I have described, arrangements such as this bill proposes to prohibit, can not essentially interfere with or prevent competition between railroads. That kind of competition, which it is supposed is prevented by such contracts, is the mere speck which floats upon the mighty current of competition, always flowing. There are a thousand forces which compete in rivalry for the reduction of the rates of transportation, and you can no more stop those forces, no more stop the competition that goes on by the clash of

rival commercial interests in this country and the world, than you can sweep back the ocean with a broom.

The Mississippi River, the Welland Canal, great cities at different parts of the country forming commercial centers with different interests to be subserved, the ocean, the Canadian lines, the transit of the isthmus, the ever clashing interests of diversified business—all these are potent factors continually by their rivalry competing for the reduction of railroad freights. Cotton in the South, and in Egypt; wheat in Dakota and in India; petroleum in the United States and in Russia; coal in Pennsylvania; iron in Spain, all these things, and a thousand others, form an anti-monopoly league stronger than individuals or boards of trade, or commercial exchanges can form. They make it impossible that this purely competitive business can be done at excessive rates charged by common carriers. These contracts for division of business or apportionment of freight are but a trifle among the great forces which carry on the great war of competition which has so materially reduced the charges for the transportation of freight, and which will go on until the lowest limit possible with remunerative returns is reached.

If I had time I should like to stop here for a moment to speak of my belief that the limit has not yet been reached. The capacity of freight-cars has been increased from 18 tons to 20 tons; Bessemer steel rails have taken the place of iron rails; improvements in machinery, in locomotives—all these things have marvelously reduced the cost of transportation. Sometimes we feel that the end is reached, but I am told that freight-cars are now in process of construction which will carry 25 tons or 50,000 pounds, in place of the original cars with a capacity of 20,000 pounds; that engines are being built whose ten driving wheel will wonderfully increase the power of locomotion, and that these improvements in engines and cars will necessitate the relaying of the iron rail, substituting a heavier rail, perhaps a 100-pound rail for 60-pound rails. The limit of the cheapening of the cost of transportation has not begun to be reached, and these little arrangements between railroad companies, adopted for their self-protection and for the protection of the public as well, have very little part to play in this great competition which is going on and must go on relation to this business.

But there is another ground on which I ask the Senate to pause before it declare such arrangements between railroad companies to be criminal. I want them to consider a question which take hold of the future of this country. These contracts and agreements and arrangements between railroad companies are in the nature of business combinations between different railroad corporations. Admit, if you please, that there is something bad about them, for the sake of argument; they must be tolerated, or the alternative is consolidation of railroad capital. I dread that result. Some political economists, some railroad men, and some men interested in what they think they see in the future, the grand co-operative commonwealth, believe that that is the best outcome of the railroad problem.

I wish to emphasize this point; George Stephensen said that where combination was possible competition was impossible; and no man ever said a truer thing. This bill leaves open and invites the worst kind of combination which this country may fear; that is, the combination and consolidation of railroad corporate capital.

What are the railroads to do if forbidden to make these arrangements? Experience teaches that the old rate war will begin; the bill encourages it. It requires no notice from a railroad company to put down its rates; but notice in order to advance its rates. The whole bill is an invitation to the individual railroad company to put down its rates without public notice, and that means private notice in advance for the purpose of securing business. The war is to go on if it is not restrained by those arrangements which the railroad companies believe best for themselves in the interest of protection, and the result will be, as it always is, consolidation, capitalistic consolidation.

Why, Mr. President, the monopolies of this country are built on the graves of weak competitors, and this bill invites that grand monopoly of railroad capital in this country which will be built upon the graves of railroads that are not able to stand in the competition, and which railroad monopoly will be the master of the people. I have not learned that such results are to be regarded with favor. I can not unlearn all the teachings of my youth at the demand of these economists, these professors of political economy, these railroad men, and these socialists. I believe that it is better to keep business in a good many hands, if you can, than to concentrate it in a few hands. I believe it is better to let the little stores in the country live than to build up the great mercantile establishments at their expense. I believe it is better to let the little factories live than to build up the great manufacturing corporations at their expense. I believe it is better to let the weak railroads live in this country than it is to build up one gigantic railroad corporation which shall occupy to the railroad business of the country the same position which the Western Union Telegraph Company occupies to the telegraph business of the country.

I believe we are holding up a false standard to our young men, that the "little farm well tilled" is better than many leagues of land in one ownership tilled by capitalists whose laborers come and go, and who have little sympathy with the proprietors; that a "little house well filled" is better than the marble palace with its interior decorations of gold, its hangings of silk, and artistic carpets from the marts of foreign nations, better in their tendency to the advancement of the prosperity of the nation and the welfare of its people. But this bill presents these alternatives. Senators may feel perhaps that I am overstating this matter. I want to turn them for a moment to history.

The railroads of this country have not had a long life. What has been the history with regard to consolidation—I mean a consolidation of capital, not combination by these business arrangements, which I defy any man to say are inherently wrong? I turn to Mr. Hadley's book, and I find that since 1853 the New York Central Railroad Company, then composed of fifteen or sixteen separate organizations, has consolidated and consolidated, until now it has a system including more than 4,000 miles of railroad line.

I find that the Pennsylvania Railroad Company, originally composed of local roads, has under one system and one management 7,000 miles of railroad track. I find that what is called the Wabash system, originally composed of many small railroads, is now welded into one gigantic management of 9,500 miles. Where is this to stop? It is the dream and vision of the railroad man that it shall go on. That is the

outcome of the problem for him. It is only a temporary check that he supposes is put upon it by these pooling arrangements.

Let me turn for a moment to the testimony of one railroad man on this subject. I read from Charles Francis Adams' testimony before the Interstate Commerce Committee on the subject of pooling, page 1204 of the report :

So far as pooling is concerned—a subject I see a good deal discussed—pooling, as I regard it, is a mere makeshift. It is an attempt on the part of the railroads to hold in check a natural law which would result in the survivalship of the fittest. If competition worked with its full severity and legislation put a stop to all pooling, saying absolutely to the railroads, "There you are, and you have *got* to compete"—and this I take to be the object of the proposed law I do not suppose there would be at the end of two years more than three or four leading corporations in the country that would not be in the hands of receivers. It would be the condition of affairs now temporarily existing in New York between the Central and West Shore roads, perpetuated and made chronic by force of law. Everlasting warfare among railroads would be provided for by statute. The thing is absurd and unworthy of discussion. Of course the railroads would in some way agree to divide traffic, and to divide traffic is to pool it. But supposing the pooling or division of the traffic effectually forbidden by law; then, so far as I can judge, the natural result would follow, a result which I for one do not object to at all, though it would be attended with immense waste of wealth and would wipe out of existence forms of securities which in amount probably would far exceed the national debt of the country.

The result would be that, as the companies became bankrupt, those who got possession of their properties would combine and consolidate them, and you would have one railroad corporation in the country in the course of a few years which, as compared with the corporations you now have, would occupy about the position the Western Union Telegraph Company occupies among telegraph companies; that is, one wholly predominating company. In other words, the legislation intended to prevent the pooling of traffic and insure competition would produce exactly what it was meant to prohibit. The railroads would be pooled themselves, and competition would be done away with through consolidation.

Then he goes on to say:

In order to secure so far as may be what you desire—that is, to preserve competition and prevent this consolidation into great corporations—the course that Congress should pursue would be the exact opposite of what is now suggested. Congress should legalize pooling, and impose a heavy penalty on any violation of pooling agreements. That would keep the weaker corporations alive and prevent them being absorbed by the large ones, as they inevitably soon must be the way things are now going on.

It will be observed that this bill does not in any line of it prohibit the consolidation of railroad capital, and in my judgment by prohibiting pooling and making it criminal it invites that result.

Now, I desire, Mr. President, to answer in advance, if I can, an argument which I know will surely be made in reply to what I say. It is that when the bill prohibits discrimination the necessity of pooling will be done away with. Suppose that to be so, for a moment. It is rather hard, even in that case, to say that a practice which has been resorted to with the avowed purpose, and only for the purpose, whatever its results may have been, of preventing discrimination, shall be declared criminal because the bill declares that discrimination must cease. I maintain that that is illogical.

But I do not believe that this bill unaided and alone will do away with discrimination, and I say so because it is the experience of foreign countries that rigid laws aimed against discrimination have been ineffectual except as aided by the efforts of the railroads themselves by pooling. The experience of foreign countries is worth something, and I want here to state what is said on the subject by Mr. Hadley. I do not know but that I read it yesterday, but I wish to emphasize what he says in these few words:

We are thus reduced to the simple alternative, pooling or discrimination. Each effort to prohibit both at the same time only makes the necessity more clear. The governments of continental Europe have ceased to struggle against it. Rightly judging that discrimination is the main evil, they recognize pools as the most effective method of combating it.

And yet for years and years they have had these anti-discrimination statutes which they can not enforce, and it was only by a resort to a system of pooling that they were able to enforce their laws. Is it not a strange thing, a solecism, that it should be urged here that an effort among railroad companies to secure the same thing which you say is to be accomplished by this bill should be declared criminal? Is it wise to discard any aid or agency which may help to carry out and make effective in its operation so important a bill as this and the removal of which may throw discredit upon the whole legislation and render it absolutely ineffectual?

I wish to read what the real situation with regard to pooling is in foreign countries.

Believing Professor Hadley, to whom I have so frequently referred in this discussion, to be the most thoroughly informed and thoroughly independent student of the railroad problem in the country, I wrote him asking for information as to the present status of pooling arrangements in Europe.

NEW HAVEN, December 25, 1886.

MY DEAR MR. PLATT: The most conspicuous examples of the public use of pooling are found in Belgium, Germany, and Austria. Fifteen years ago all these countries had a good deal of active railroad competition; and it was found in each country that under any such active competition it was impossible to secure obedience to any law against discrimination. The reckless and speculatively managed roads were able to force not merely the sounder private roads but the state roads themselves into discriminations of the worst kind.

You know the general history, and I will only mention one or two recent facts:

I. The Belgian state railroads have within the last two years concluded a pooling agreement with the only private system of importance, which provides for an almost permanent division of traffic and is intended to render competition forever impossible.

II. Although nearly all the railroads in Germany are state-owned, the rivalry between different systems is so strong that the pool is necessary to regulate the action of the officials themselves; and in order that the system may be thoroughly carried out, a recent imperial ordinance *forbids the shipper to select the route over which his goods are to be sent.*

III. In Austria not merely do the state roads divide traffic with the private roads, but also with competing water routes; and the government authorities say explicitly that they regard this as the only possible method of securing justice to local points. There has been no recent change in legislation, but the practice is becoming more fully established every day.

These are the countries where the most positive authority is given to pools; they are also those where railroads are the best managed, rates on the whole lowest, and traffic developing most harmoniously. The other countries may be divided into two classes. In one class are France and Italy, where the country is districted between different railroads, and competition thus rendered impossible—a division of the field instead of a division of the traffic. Yet these countries pool their international traffic, which can not be thus districted.

The second class includes those countries where pooling is merely tolerated rather than encouraged—Switzerland, Russia, Holland, or England. It is noticeable, 1, that these countries suffer from more abuses and discrimination than those previously mentioned; 2, that they are worse where natural causes have hindered the growth of pools, as shown by a recent investigation in Holland; 3, that government authority over rates, however great, is ineffective to prevent discrimination, Russia being a strong instance in point.

As far as I know, no European country directly prohibits pools.

Sincerely yours,

ARTHUR T. HADLEY.

I do not think that we can afford to overlook the importance of the experience of these countries in this respect.

There is a single other feature of this bill to which I wish to refer in this connection. It contains a short-haul clause or law. Why? Why the necessity for it? The inexorable logic of the case is that the competitive rate is too low and the railroads are attempting to earn remunerative rates by putting unreasonable charges upon local traffic. Is there any other reason for a short-haul law? What is to be the effect of the prohibition of pooling? To make the competing rates still lower; they being now too low, and to force the railroad company if it be possible to raise its local rates.

How a man who insists upon the necessity and justice of a short-haul law can also insist upon the necessity and justice of a prohibition of pooling, I am unable to see. You propose to remedy the already too low competitive rates by saying that the railroads shall not recoup for their losses upon the local traffic, and yet you propose to prohibit that very thing which the railroad companies have adopted as the only means known to them to prevent competitive rates from going still lower. You put the railroad companies in the condition of a man under what was claimed to be the old Calvinistic theology, of which it was wittily rather than truly said that under its doctrine a man is "damned if he does, and damned if he don't." That is precisely what this bill proposes to do with the railroad companies of the country. In my judgment a more glaring inconsistency in legislation was never attempted than in this proposal to insert a short-haul law and the prohibition of pooling in the same bill.

But there is another point to which I did not allude at length when I was speaking of the competition which exists, that it seems to me makes pooling necessary and makes its prevention entirely improper. The American railroads which are competing between the West and the East under this bill with pooling prohibited will be absolutely at the mercy of the Grand Trunk Railroad of Canada. Whatever effect a short-haul and long-haul clause may have upon that traffic as diverting it to Canada, you may rest certain, I think—and I think experience justified me in the assertion—that if pooling is prohibited the traffic of the West comes to the seaboard through Canada and not over American roads. Why? Because by this bill you invite the Grand Trunk road to put down its rates without notice. It desires first of all things to insure business. Then it can put them up probably.

It is to-day making its arrangements, by the outlay of great amounts of money in securing improved cars and engines and the improvement of its track to do a greater through business. Now, prohibit pooling, put the bill in operation, and what will be the result? The Grand Trunk road may put all through business from the West to the seaboard down to an unremunerative point and make up for it recouping upon the local traffic through Canada, and we are powerless to prevent it. You may say that pooling would not prevent it; but it is the only means which the American roads have to secure any terms with the Grand Trunk road which shall give them any considerable share of the traffic which shall pass from the West to the seaboard.

I have already occupied more time than I desired, and, instead of

stating my own conclusion as to what pooling has accomplished, I prefer to state the conclusions of Mr. Nimmo, from whom I have frequently quoted during this argument and whom I quote with the more satisfaction, because I think he has given the matter as careful study perhaps as any man investigating it outside of railroad circles. As will be seen by his reports, he devoted at least eight years to a scientific and practical study of this problem. The history of every pool, the results of every pooling arrangement almost, are to be found in the tables and statistics of his internal commerce reports from 1879 to 1884. The conclusions of such an investigator are entitled to weight, and as they are clearly and tersely stated and coincide entirely with my own, I wish to adopt them.

In conclusion the following general observations may be made in regard to railroad federations or pooling organizations:

First. They have been instrumental in preventing unjust discriminations through special secret rates to favored shippers, and the consequent demoralization of trade.

Second. They have prevented many unjust and ruinous discriminations against towns and cities, and against particular States or sections of the country.

Third. They have put a stop to violently fluctuating rates.

Fourth. They have had the effect of protecting the weaker lines and of preventing their absorption by the stronger lines, and thus of conserving elements of competition in transportation.

Fifth. By preventing the absorption of the weaker by the stronger lines; they have prevented the threatened danger to the country of its being distracted among a few great corporations, by which means the regulating influence of the competition of trade forces would have been eliminated, and transportation would have got the mastery of trade.

Sixth. They have tended to prevent those shocks to the financial interests of the country which generally accompany the bankruptcy of great railroad corporations.

Seventh. Since they have been adopted the railroad transportation facilities of the country have been greatly extended. The volume of traffic has also enormously increased, and rates have constantly fallen. These facts seem to prove that railroad federation has not had the effect of obstructing the beneficial operation of the competition of trade forces and of the direct competition between transportation lines. Statistics hereinbefore presented clearly indicate this fact.

Eighth. The most hopeful aspect of federations for the division or pooling of traffic is that thereby the railroads have been brought to a condition in which their accountability to the public interests may be more clearly defined, and in which any departure from undoubted principles of right can be observed and the responsibility therefore located. It is believed to be much easier to regulate great federations of railroads with respect to matters relating to commerce among the States than to regulate a great number of railroads acting independently, for the reason that these federations constitute concrete expressions of relationships and antagonisms both among railroads and among trade centers, and tend to illustrate the relative force of the same.

Ninth. Railroad pools have not proved to be rigid compacts, but they have been constantly subject to change. Occasional and even protracted wars of rates render their requirements at times almost entirely inoperative. This must, in the light of public interests, be regarded as a favorable symptom of their practical workings. The conditions surrounding and governing the commercial and transportation interests of the country are constantly subject to change, and it is impracticable that any fixed rates or set of rules should be formulated which in practice would tend to prevent such changes.

The Senator from Massachusetts [MR. HOAR] asks me if I have in my mind statistics bearing on the point as to whether the net receipts of the railroad companies pay more on the average than a fair rate upon the capital invested. I think that was the question. I have not the exact figures. I sent home to Connecticut, my own State; I found this to be true of Connecticut, that the amount paid as dividends upon railroad stock in the State of Connecticut during the past year would average upon the whole capital stock of Connecticut railroads about $4\frac{1}{2}$ per cent. Of course some roads do not pay any, and one pays as high as 10 per cent., but the average upon the capital stock of all railroads in the State

would be $4\frac{1}{2}$ per cent. The statistics for the whole country are not accurately in my mind at this time, but I think I will venture upon my recollection to say that the entire railroad dividends of the United States in the year 1885 applied to the entire capital stock of the railroad companies of the United States would produce a dividend of about $2\frac{1}{2}$ per cent.

MR. HOAR. Do you mean stock unwatered?

MR. PLATT. I mean the stock as it stands, watered, if it has been watered, and undoubtedly it has been. The Senator from Colorado [MR. TELLER] says that is true in all cases. I think it is not universally true. Here is a railroad running into Washington—the Baltimore and Ohio—that has not increased its capital stock in many years, which has to-day, as I remember, only twenty millions of capital stock, though its property equals in value the property of roads whose capital is three or four times as much. It is not true in a good many instances that might be mentioned. It is lamentable that it is too true in this country, but, as I said, the discussion of what rate of interest shall be paid upon the capital as it stands, including water, is outside of this discussion which I am now carrying on. I should say as severe things on that subject probably as any member of the Senate. I should be glad if there was some way to eliminate fictitious capital. I might regard competition as a blessing if when it bankrupted a railroad management the water should be eliminated before another management was set on foot; but that never will be.

Mr. President, I have heard it suggested in reply to all this that we can pass this law and then pass another law directing the commission to investigate; and if the commission shall on the whole conclude on its investigations that pooling arrangements are not injurious to the public welfare, then we can repeal the section prohibiting pooling. That is after the fashion of what is known in Scotland as Jedburgh justice, for border marauders, “hang them first, try them afterwards.” That is not a correct principle in legislation. We had better investigate first. All investigation so far, the weight of all testimony, the weight of all the testimony of students who have given the most attention to this problem, and the weight of the best informed railroad officers and railroad commissioners, shows the wisdom of legalizing and regulating, rather than prohibiting pooling.

I suppose that Senators will rise and tell me of specific instances where justice has not been done to localities or to individuals under pools. I reply first, legalize them and then regulate them by this commission and the evils will disappear. They are not inherent in the system. I reply, second, those evils would not be remedied by prohibitions of pooling. They would exist still and be intensified. Do not charge upon the pool that for which it is not responsible. Do not make it criminal to engage in such contracts because certain things occur, not chargeable to them, which you do not like.

The issue here, however, is not between legalizing immediately and prohibiting. It is between the proposition now before the Senate and the Senate bill, which, very properly in my judgment, sought to refer this matter for further investigation to the commission to be appointed under the bill. I submit to the Senate that a majority of its Senators to-day believes that it is the wise thing to do; that the intelligent judgment of Senators must bring them to this conclusion. If it is wise, why sur-

render it? Shall we surrender it for the fear that if we do the wise thing here there may be obstinacy elsewhere which shall prevent any legislation at all? If that principle is to be adopted, then we are driven to this in the Senate, that whenever any legislation upon any subject is desirable and we have determined what legislation is wise, and politic, and just, we are to surrender our views as to that and agree to legislation which we deem impolitic, unwise and unjust, because otherwise we can not get any legislation at all.

Mr. President, others may yield their judgment upon what they consider vital matters for the purpose of getting some kind of legislation, but for one I am content to stand and take the judgment of the country upon my action when I vote only for what upon mature deliberation I believe is the best legislation. I do not believe that the legislation will fail if this bill goes back to a conference with an indication that the Senate will not consent to brand as criminal practices those arrangements which railroads have made to accomplish the precise object which is intended to be accomplished by legislation in this bill. I believe we may trust to the good judgment of conferees and of legislators not to do a thing which, upon reflection and investigation, they must be satisfied will probably, I may say almost inevitably, break up and demoralize the existing conditions of railroad service in this country.

Nine-tenths of all the interstate-commerce business done to-day is done under those arrangements which are sought to be damned because of the evil meaning which has been given to the word "pooling."

Whatever of stability has been given to the railroad business, and through it to other business of the country, has been secured by these traffic arrangements, and in my judgment a bill which breaks them all up ruthlessly within sixty days, which invites the competition which is to demoralize business, will be far-reaching in its injurious results. For one, I prefer to stand by my judgment. I will try to have the courage of my convictions. I will try to do what I believe to be right, and I can not assent to a bill, which, though I accept its other provisions, I believe to contain a provision which I regard as positively vicious and wrong.

REMARKS OF MR. CULLOM,

IN THE U. S. SENATE JANUARY 10, 1887.

THE LONG AND SHORT HAUL CLAUSE.

MR. CULLOM.—Mr. President, I have not risen for the purpose of making a general speech upon this subject. I have been more inclined to say nothing on the subject than to occupy any time whatever; but certain portions of the bill as reported by the conference committee have been very fiercely attacked, and seem to be in a measure misunderstood in my judgment, so that I have felt called upon to give expression to my views on one section of the bill alone at present. What I shall say to-day will be confined substantially to a discussion of the meaning of the fourth section of the bill. It may be that before the discussion is closed I shall have something to say upon other portions of the bill, but at present I shall confine my remarks to the fourth section.

Mr. President, the regulation of interstate railroad transportation is a subject that occupies a very conspicuous place in the thoughts of the American people. The magnitude of the vast interests to be affected by such regulation makes it necessary that the legislation proposed on the subject should receive the most thoughtful and deliberate consideration, for the commerce and prosperity of the entire country may be affected favorably or unfavorably, as the case may be, by the character of the regulations which Congress, in the exercise of its undoubted right to regulate, may see fit to impose upon interstate transportation by railroad. I recognize the importance and the great propriety of a full and free discussion of the measure now before the Senate, which may be so far-reaching in its consequences, and I am anxious that the effect and meaning of the provisions of the bill shall be fully understood, in order that the Senate may act upon it intelligently.

Since the report of the conference committee was made public the bill as it now stands has been critically analyzed by the ablest representatives of the various interests that will be most affected by its passage, in case it shall become a law, and has received a great deal of attention from the press and from the general public. It seems to me that the bill has stood the test of this general and critical scrutiny remarkably well. Its general provisions seem for the most part to have met with approval, while the feature which has been most strongly objected to seems to have been misunderstood, if not misrepresented, and it is this feature only which I desire now to undertake to explain.

I have not had time to carefully read all the numerous expressions of opinion upon the bill that have come under my notice, but, so far as I have been able to do so, it appears that the railroad managers and others prominently identified with railroad interests who have expressed their views publicly have directed their attacks almost wholly upon the "short-haul" section and the one prohibiting pooling. For the most part they criticise these sections and express alarm at their supposed

effect upon the country, but take pains to explain with more or less qualification that they approve the general scope of the bill, or at least they do not seriously object to its other provisions.

If the very able gentlemen who manage the railroads of the United States find only two points of serious attack in a measure which is intended to bring about, in many important particulars, a reversal of existing railway practices and methods of management, we have a right to assume that the bill is not, aside from the features which they specially criticise, unduly oppressive toward the railroads, or very far from right in its main provisions and regulations. And if these gentlemen are mistaken in their view of the probable effect of the two features which they attack, their objections to the enactment of the proposed law fall to the ground. I think they are mistaken, and that this will be made to appear during the course of the present debate; but, if I am mistaken and they are correct, I would be unwilling to give the measure my support.

STATE LEGISLATION NECESSARY TO RENDER THE LAW OF CONGRESS EFFECTIVE.

It must be borne in mind, however, that any measure which Congress can enact upon this subject may prove to some extent ineffective and unsatisfactory until it has been supplemented by similar State legislation, just as the State legislation now in force in many of the States has been found ineffective and unsatisfactory in some respects because of the absence of national legislation. There is no way in which the entire internal commerce of the country can be subjected at once to the same uniform plan of regulation under the Constitution as it stands. Much of this commerce is beyond the jurisdiction of Congress, but if we will apply just and proper regulations to the interstate commerce now subject to our control under the Constitution, I am satisfied that within a few years the States which have not already done so will enact similar regulations, and that eventually the entire internal commerce of the country will be placed under a substantially uniform plan of regulation.

Until that time comes, however, it may be possible for the railroads to obstruct and interfere with the successful operation of the law to some extent, because of the divided jurisdiction of the States and the general government over the subject, in case the railroads should not be disposed to accept in good faith the regulations Congress may impose upon them. But I do not look for factious or unreasonable opposition on the part of the leading railroads of the country. When once the bill goes into force, if it should become a law, I believe that the railroads will, as a rule, seek to give the law a fair interpretation and endeavor to live up to it.

UNJUST DISCRIMINATION PROHIBITED.

But, however that may prove to be, we must expect a great deal of friction in attempting to put into practical operation a new and heretofore untried system of regulation—untried, at least, as to the interstate commerce of the United States. The questions that may arise can not possibly all be foreseen or guarded against. The requirements of the bill against unjust discrimination and favoritism as between persons, places, and particular classes of traffic will pinch very hard in a good many quarters. The "big fish" will be placed upon an equality with the little

ones, or more nearly so, and we must be prepared to hear very energetic and very vigorous protests from those who have been enjoying all kinds of special privileges and advantages at the expense of the general public, and who will be convinced that the country is going to everlasting smash if their privileges are cut off. But I take it that it is our duty to legislate here with a view to securing the greatest good to the greatest number, and I have faith that, if the legislation now proposed can be fairly tested, its enactment will prove beneficial alike to the railroads and to the general public when it is once fairly in operation and when business has adjusted itself to the changed conditions which it will bring about.

I come now to the consideration of the much debated "short-haul" section.

The objection made to this section as it now stands, which, if it were well founded, I should regard as the most serious, is that it is indefinite and ambiguous, that it is open to more than one construction. Of course, we can not undertake to say positively what construction will be put upon the language used by the courts if they shall be called upon to determine the meaning of the section. It seems to me, however, that but one construction can be reasonably and properly placed upon this section, especially when it is considered, as it must be, in connection with the other provisions of the bill, and that its meaning is perfectly clear. But in view of the erroneous construction that seems to have been put upon this section in some quarters I deem it proper to state that there seems to be no difference of opinion as to its meaning among the conferees on the part of the Senate. I do not know that I ought to say this, but I venture to do so; and yet it may be that as to the minutiae of my statement the other conferees of the Senate may not agree with me.

I think the Senator from Connecticut [MR. PLATT] and the Senator from Tennessee [MR. HARRIS] understand the section as I do, and I think I am justified in saying that we would not approve it if we supposed or believed it to mean what some have claimed that it does mean or may be made to mean.

A GREATER SUM CAN NOT BE CHARGED FOR A SHORTER THAN FOR A LONGER DISTANCE.

The short-haul section simply undertakes to lay down in specific terms a rule or principle which, as I have always contended, is already in effect contained in other provisions of the bill. The first requirement of the bill on the subject of rates is found in the first section, and is that all rates shall be "reasonable and just." This is in effect a declaration that under similar circumstances and conditions a greater sum shall not be charged for a shorter than for a longer distance, because under such circumstances it would not be "reasonable and just" to make such a charge. The next requirement of the bill that affects this question is found in the first part of the third section, which declares—

That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to, any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

This is likewise a declaration that a greater sum shall not be charged

for a shorter than for a longer haul under similar circumstances and conditions, because such a charge would be the making or giving of an "undue or unreasonable preference or advantage" to one particular "locality," or would subject some other particular "locality" to an "undue or unreasonable prejudice or disadvantage."

Now let us see what section 4 says and means. It reads as follows:

Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

A GREATER AGGREGATE SUM SHALL NOT BE CHARGED FOR A SHORTER THAN FOR A LONGER DISTANCE OVER THE SAME LINE IN THE SAME DIRECTION.

As I understand it, this section as it now stands simply prohibits a railroad corporation from charging a greater aggregate sum—not a higher rate—for a shorter than for a longer distance over the same line, in the same direction, and under substantially similar circumstances and conditions, when the shorter is included within the longer distance. There is no other prohibition made in positive terms. The declaration that "this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance" does not in terms prohibit the charging as much for a shorter as for a longer distance, but simply withholds the legislative sanction from the making of such a charge. This qualifying clause negatives the inference that might possibly be drawn from the language of the section without these words, namely: that an equal charge for a shorter distance is authorized by inference because only a greater charge is prohibited. This qualification, therefore, leaves the question of whether an equal amount can be charged for the shorter distance to be determined by the provisions of the bill to which I have already referred, requiring all charges to be reasonable, and forbidding the giving of an unreasonable preference or advantage to any particular locality.

ALL CHARGES MUST BE REASONABLE.

MR. HOAR.—I should like to inquire of the Senator from Illinois, with his permission, if he understands that the interpretation of the language of this bill that it only prohibits the charging a larger gross sum for the shorter than for the longer distance, and does not prohibit a larger proportionate charge for the shorter than the longer distance, is the sense in which the House of Representatives, as represented by their conferees, understand the bill, so far as he is informed?

MR. CULLOM.—I have no question but that every member of the conference committees of both Houses unqualifiedly and without mistake understands this not to be a prorate per ton per mile law, but that the

corporations shall not be allowed to charge in the aggregate, in the sum total, the same amount for the short as for the long distance, unless under certain circumstances.

The requirements of the fourth section, then, is that as between shipments of the same kind in the same direction over the same line, and made under substantially similar circumstances and conditions, a greater sum shall not be charged for a shorter than for a longer haul when the shorter comprises part of the longer haul—not that a higher rate shall not be charged per mile, but that a greater aggregate sum shall not be charged. And I desire to say here, Mr. President, that one of the elements of opposition to this bill throughout the country has been the result of a misrepresentation of the meaning of the fourth section of the bill. There has seemed to be, on the part of those who want no legislation, a determination that that section of the bill shall be construed into a pro-rate-per-mile section, when I undertake to say that no man who has been on the committee ever dreamed that the language which is used in that section, and which has been used in it from the beginning since the select committee reported the bill to the Senate, could have that construction placed on the words used.

MR. MITCHELL, of Oregon.—Section 4 reads :

That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, etc.

What I want to get at is the meaning of these words “under substantially similar circumstances and conditions for a shorter than for a longer distance on the same line, * * * the shorter being included within the longer distance.” To explain what I desire to get at, I will make this inquiry of the chairman of the committee : Take a long haul, from San Francisco to Portland, Oreg., over a railroad running from San Francisco to Portland. Transportation by rail over a route like that, of course, is affected to a certain extent by steamship competition, by steamers running between the terminal points. Now suppose a short haul, between points intermediate of those two terminal points, say from Stockton to Roseburgh ; would that come within the provisions of the section ? Would that short haul, included in this long haul, be subject to the influence of steamboat competition ? Is that a haul “under substantially similar circumstances and conditions” as the haul over the whole line of road ?

MR. CULLOM. I will touch upon that subject briefly in what I have to say, and shall answer the Senator from Oregon in the course of my remarks.

THE COMMISSION MAY GIVE RELIEF WHERE TRANSPORTATION IS
EFFECTED BY STEAMSHIP COMPETITION.

MR. MITCHELL, of Oregon. I am inquiring for information. I have not yet made up my mind as to the construction of this bill.

MR. CULLOM. I am not objecting to the Senator's inquiry. I was going to say that I shall discuss that point briefly in what I say ; but in answer to the Senator I have this to say now : that the words “substantially similar circumstances and conditions” are words of very great im-

portance, and words which may be taken for what they say by a court or by a commission who may have something to do with the construction of the law. Whether the section should be constructed so as to give relief as to the water point of competition that the Senator refers to, or not, the section itself does provide that at such a competing point, if the fact does exist, the interstate commission shall have the power to give relief upon a showing of the proper state of facts.

MR. HOAR. The power of suspension is given in a special case.

MR. CULLOM. And of course every case of the kind would be a special case, if, in the judgment of the commission, it was deemed necessary to relieve the railroad company at that particular competing point from the operation of the law.

MR. HARRIS. It does not refer to one single shipment, but to the establishment of a rule by the commission.

MR. CULLOM. Of course a rule applying to all alike.

MR. HOAR. I will put an illustration. The port of Boston, in Massachusetts, has a foreign commerce of about \$125,000,000 annually. It was larger than that three or four years ago, but the change is not in the amount of commerce, but in the value of the articles exported and imported. That was the amount last year. Now, probably, of the exports, which are seventy odd millions of dollars, between thirty and forty millions consist of cotton, cattle, wheat, corn, hams and bacon, and lard—the food products of the West and the cotton of the South. Every ton of that produce exported to-day I suppose is taken from a place in the country which is from 150 to 250 miles nearer to New York, Philadelphia, and Baltimore. Now, the railroads give a rebate of five per cent. on all those exported articles. On that export trade of course depends a corresponding import trade, which otherwise we should not get at that port.

Have we got under this bill to put down all the local business of Massachusetts, the cotton which is taken to her factories to be used there and the food products which are brought to feed her people, to the New York rates, that is to the rates of carriers who do not have to carry the goods so far by 250 miles; or have we got to give up that export trade; or is this great export trade of the second commercial city of the country to depend on whether five commissioners happen to think that is or is not a special case?

THE SAME RATE MAY BE CHARGED FROM THE WEST TO BOSTON AS TO
NEW YORK.

MR. CULLOM. Mr. President, it may be said to be rather unfortunate that Boston is a little farther away from the center of gravity than New York; but I do not think myself that there is anything in this bill which prohibits a railroad from carrying to Boston just as cheaply as it carries to New York from Chicago or Omaha or San Francisco, and there is not anything now that prevents it.

MR. HOAR. I do not think the Senator quite apprehends the force of my statement. The bill does not make New York a comparison; but does it not say that a company shall not carry over the same line of road to other points in Massachusetts the same article at a larger price than it charges this foreign commerce—that is the proposition—unless the com-

missioners come in and make an exception? Then the railroads have got to put down the whole railroad transportation in cotton and food products in Massachusetts along their lines to the New York rates if they put down the exports from Boston to the New York rates, and that they can not do under the laws of trade, because, of course, the other road, which is 230 miles nearer, has the advantage.

MR. CULLOM. So far as this section is concerned, when a load of corn, wheat, cattle, or what not, is started from Chicago, there is nothing in this bill that prohibits the transportation company taking the product in a car from Chicago at exactly the same rate to Boston that it takes it to New York—not a single line. The only question, then, is a question as to whether the railroads will carry the products as cheaply to Boston as to New York. In my own judgment they will.

MR. HOAR. My friend does not still answer the question. Do you not prohibit them from carrying it to Boston at a less rate than they carry it to Springfield, or Worcester, or Fall River, or to any other point on the line in Massachusetts?

MR. CULLOM. At a less rate, yes.

MR. HOAR. That is exactly the point. We have got, therefore, have we not, under your bill to put down Worcester and Springfield and Fall River to the New York rate, or else Boston can not have the exports?

MR. CULLOM. Has the Senator any objection to having the rate put down? Is there any reason why the rates to New York and Boston should not be the same?

MR. HOAR. The roads can not live at those rates. My friend has got in his bill the general provision that they shall not charge anything more than what is reasonable to those places. You have got the thing down under the operation of your bill to what is reasonable as an independent proposition.

MR. CULLOM. Has the Senator any objection to that?

MR. HOAR. Of course not. You have got it down to what is reasonable; now stop there. Then the railroad company says, "While I am doing this business for all New England, for all its local uses of every sort, food supply or supply of materials, at a reasonable rate and no more, which I am bound to do, I can in connection with that business take on in addition, at 5 per cent. rebate, these thirty millions which are going to Europe, if you let me; but if you say I shall not do that unless I put local rates for all Massachusetts at 5 per cent. below what is reasonable for them, I can not live, and the whole business must go to New York." That is the proposition.

Now, a man doing a business of transportation at a fair rate, a reasonable rate, and no more, may very often afford to take a particular piece of merchandise or merchandise for a particular destination at very much less than his usual rates. If the Senator should engage to take me with a hack over to Bladensburg this morning and charge me \$10 for it, and that was a reasonable price and no more, and he should come across a man who was on his way there with a carpet-bag in his hand about to walk, and the man says, "I have not got but a dollar in my pocket and I will give you that," and he takes him on, that does not do me any

injustice, it does not do him any injustice, and it does not cause any loss. That is the attitude of the foreign commerce of every principal port.

What I want to know of the Senator now is, not to debate this matter, but to ascertain the meaning of the bill. Do I correctly understand him as saying that the right to continue that foreign commerce, in which the condition is what I have stated, to be dependent in the future under the act of Congress, on the opinion of five commissioners? More than that, is that foreign commerce to stop for a while, to be revived again a few months later, when the commission have organized and got around to this matter?

MR. CULLOM. Mr. President, it is pretty difficult to pass any act providing for any regulation whatever that may not appear to harshly interfere with what somebody is doing. Now, so far as I am concerned, I have no disposition to interfere with the foreign commerce of this country. I would very much prefer to see the foreign commerce increase, if it can be done consistent with the protection of the great masses of the people of this country outside of the seaports.

But here we are met with this condition of affairs—unjust discrimination, extortion, secret rebates, and all manner of unjust practices have been going on for years by the railroad corporations of this country because there has been no regulation of them by the Government of the United States. Now we come in with a bill that undertakes, in a moderate degree I think, to apply to them some sort of regulation. We say that there shall be no secret rebates; we say that there shall be no unjust discrimination; we say that there shall be no extortion. Then we come with the fourth section and say that there shall not be a greater charge for the shorter than for the longer distance over the same line under substantially similar circumstances, the shorter being included within the longer, and the property, of course, being of like kind.

Now, how are we ever going to regulate these railroads? The Senator from Massachusetts steps in and says that is going to interfere with the trade of Boston; it is going to stop the export trade and the import trade that is going on at the city of Boston. I do not know whether it will do so or not, but I do not believe it will because those words, as I said awhile ago, "under like conditions and circumstances," are words that the commission, that the railroad men, that the courts are bound to construe in the most liberal manner consistent with the actual honest commerce of this country.

A LIBERAL CONSTRUCTION MUST BE PUT UPON THE LAW.

I undertake to say that you can not pass any bill which will in any way restrict the traffic carried on by corporations unless you have something that will in some way appear to interfere with localities or with individual interests which are being carried on. I believe myself that those words "under similar conditions and circumstances" will open a way, if any way is necessary to be opened, so that the real commerce that is being conducted by Boston or New York or Philadelphia or any other seaport will go on without the slightest interruption. I do not believe that the Senator will find that his constituents in the city of Boston will be in the slightest degree interrupted in their foreign commerce which they are carrying on to-day, even if the very letter of the law should be enforced as the fourth section declares.

But I do not believe it will be enforced as the letter of it reads in all cases, but that a proper and liberal construction will be given by the courts and by the commission and by the railroads themselves to the words I have referred to. My own judgment is that if the common carriers of this country proceed right along in the discharge of their honest duties as common carriers and construe those words liberally so that they may carry the products of the West to the city of Boston to be transported to the people on the other side of the water, there will be no interference with that work by the commission, by the courts, or by anybody else. But if we are going to regulate these corporations at all, if we are going to stop unjust discrimination and the secret rebates by which towns are built up and towns are destroyed, by which individuals are destroyed and individuals are built up, we must have something in the bill which will mean something, or else we might as well lay the bill on the table and go at other business.

The limitations placed upon the prohibition that is made are very significant, and they must not be overlooked. They require that in determining the sum that may be charged for a shorter as compared with a longer distance, the comparison must be made—

1. Between shipments "of like kind of property."
2. "Under substantially similar circumstances and conditions."
3. "Over the same line."
4. "In the same direction."
5. When the shorter is "included within the longer distance."

When the act is to be applied in any given case to measure the charge that may be made for any distance, as compared with a longer distance, all of these limitations must be taken into account, and they must all apply to the case—not three or four of them, but all of them. The first, fourth, and fifth of these limitations do not appear to call for any explanation, but the meaning of the second and third may need some explanation.

THE LONG AND SHORT HAUL CLAUSE TO BE ENFORCED ACCORDING TO
"THE CONDITIONS THAT GOVERN RAILWAY TRAFFIC AND THE
CIRCUMSTANCES UNDER WHICH IT IS TRANSPORTED."

As I understand them, the words "circumstances and conditions" mean the conditions that govern railway traffic, and the circumstances under which it is transported. To my mind these words are full of meaning. They comprehend all the circumstances and conditions that may justify differences in rates, such as competition with other railroads and with water routes, the volume and character of business at different points, the difference in terminal expenses, and the cost of service in each case. If the words used were "the same circumstances and conditions," ingenious railway gentlemen would be able to show that the circumstances and conditions were never exactly the same in any two cases. And they might also be able to show that they were not "similar," if that was the word used. But the words "substantially similar" impart enough latitude to the comparison to enable the courts to exercise a sound discretion and common sense in passing upon cases that may arise.

So far as any one railroad company is concerned, therefore, the sum which it may charge for a haul from one end of its railroad to the other end becomes the maximum amount it can charge for any shorter haul

over that road in the same direction and under substantially similar circumstances and conditions when the shorter distance is included within the longer.

THE MEASURE OF THE CHARGE FOR A SHORTER DISTANCE IS THE SUM TO BE CHARGED FOR A LONGER DISTANCE.

But the question that seems to trouble those who object to the section as it stands is, whether the maximum thus fixed is the sum which a railroad company charges upon shipments originating at and destined to points upon its own road, or whether the maximum is the sum which it accepts as its share of a through rate upon shipments passing over its road which originate at or are destined to points upon another road. It seems clear to me that there can be but one answer to that question.

In the first place, the measure of the charge that may be made for the shorter distance is the sum that is charged for a longer distance over the same line and under substantially similar circumstances and conditions. The rates fixed by a railroad company between points upon its own road are clearly rates upon one line, or, in the terms of the bill, the "same line." A railroad company can make and control the rates upon its own road, and the section says that in making such rates the short-haul principle shall be observed. A railroad company can not control rates over the road of another company. But when two or more companies unite in making joint rates over their respective roads, they become in the eye of this bill one line, and this section says that the short-haul principle must be observed in making rates over that line, the two or more roads composing it being, within the meaning of the section, the same line so far as such joint rates are concerned. The word railroad is used throughout the bill and the word line is used only in this section. The courts will be bound to assume that the word line means something different from the word railroad, or it would not have been used in this one instance when the word railroad would naturally have been used if something different had not been intended. The word line means a railroad or a combination of railroads. It means a route. Section 7 of the bill requires the carriage of freights to be "treated as one continuous carriage from the place of shipment to the place of destination," and this could not be done in the case of shipments over connecting roads if the word used in this section was "railroad" instead of "line."

MR. GEORGE.—Does the Senator wish to be understood as saying that it is the meaning of this bill that the long and short haul provision does not apply; that is, that the circumstances are not substantially similar, where one of the points is a competing point and where one is not?

MR. CULLOM.—I mean to say simply this: You take one railroad, if you please, between the city of Washington and the city of New York; that railroad makes its schedule of rates, and it publishes, under this bill, that schedule of rates, and so far as its operation on its own road, not in connection with other lines or roads, but on its own road, it is not at liberty to charge more for a shorter distance on that road between here and New York under like circumstances and conditions than it charges from here to New York.

MR. GEORGE.—But the point is this: I understood the Senator to say—and that is what I want to have settled—that if one point from

which the shipment is made is a competitive point, either by having a competing railroad or by having water transportation, and the other point from which the shipment is made is not a competitive point, then the circumstances are not substantially similar.

MR. CULLOM.—I do say the facts should be considered.

MR. GEORGE.—Then let me say that, if I believed that that was the meaning of the bill and the courts would assent to it, I would vote against it, because with that construction upon those words the whole provision in the bill in reference to the long and short haul amounts to nothing.

MR. CULLOM.—If it does not amount to anything, it will not hurt anybody.

MR. GEORGE.—I do not want to hurt anybody, but to save somebody by a substantial provision on that subject.

MR. CULLOM. So do I; but I do not want to humbug anybody either. The Senate, however, by a deliberate vote placed in the bill which was passed by the Senate during last session these words, "under like circumstances and conditions," and did it, the select committee not having reported those words to the Senate in the original bill.

MR. GEORGE. I do not object to the words. I object to the interpretation which you put upon them. I do not believe that is the true and legal interpretation, and I protest that this bill shall go through here with an authoritative exposition or interpretation of the meaning of these words given them by the Senator. If that be the meaning I am against it.

MR. CULLOM. The Senator from Mississippi has a right to put whatever construction on those words he chooses, and of course he will do so; but I say, not as the chairman of the committee, but simply as a Senator upon this floor, that those words were put in there by this Senate after the select committee had failed to report them, and they were put there because the original section reported by the committee was too rigid and it was feared that it would interjere with the general commerce of the country, and when they were put there they were put there to mean something, and they do mean something.

They mean just what they say, that you shall not charge more for the shorter than for the longer distance on the same line in the same direction under substantially similar circumstances and conditions, and those conditions and circumstances may be, if you please, the fact that one place is a competing point and that another place is not, the fact that one place furnishes a large amount of business and the way-station does not furnish perhaps more than a car-load, and that it incurs additional expense and all that sort of thing. No court, no commission, and no lawyer can afford to say that those words do not mean anything when they are put in there.

MR. GEORGE. With that construction of it, I think the Senator gives away all the beneficial part of the bill.

MR. CULLOM. The Senator does no such thing. The fact to-day is — and I want the Senator from Mississippi to hear it —

MR. GEORGE. I will listen.

MR. CULLOM. The fact to-day is that there is an utter disregard by the railroads of the country of the circumstances that there are thousands and tens of thousands of shipments made under exactly similar circum-

stances and conditions where one is discriminated against and another is not, where one place is broken down and another is not, where one man gets rebate and another does not; and the purpose of this bill is to prevent that in so far as we may be able to do it without crippling the commerce of the country. Does not the Senator think there is anything in it?

MR. GEORGE. I think there is a good deal in the provision against discrimination and the provision against rebates, but I think that by the construction put upon the clause as to the long and short haul the Senator has destroyed the benefit of that provision.

MR. CULLOM. The joint through rates which are made by two or more railroad companies, between points upon their respective roads, are made over an entirely different and distinct line from that over which any one of the companies individually makes rates. And they are also made under different "circumstances and conditions" from those which govern and determine rates over a single railroad.

The two transactions are separate and distinct, neither being necessarily governed by the other. Furthermore, the making of joint through rates is specifically recognized by the bill in the section requiring publicity of rates, and nowhere in the bill can anything be found in relation to the division of a joint rate by connecting roads. I am satisfied, therefore, that the only construction that is warranted by the language of the section is the one I have given it, and that, instead of requiring rates to be measured by the percentage of a through rate which a road accepts, or of requiring through rates over connecting roads to be an aggregation of the local rates over each road, as some have claimed, the section as it stands simply requires that each railroad company shall observe the short-haul principle as to its own rates, and that the same principle shall also be observed by a combination of railroads as to the joint through rates between points upon their respective roads agreed upon by such a combination.

I have received a copy of the New York Times of the 5th instant, containing a long argument against this section by Mr. George R. Blanchard, commissioner of the Central Traffic Association. Mr. Blanchard is a very able man, and has a peculiar faculty for discovering practical difficulties that may arise under this bill. If his questions can be answered satisfactorily, as I think they can be, I feel sure that the bill can stand the test of practical operation reasonably well. In this letter Mr. Blanchard addresses some questions to me, which I will endeavor to answer in order. In discussing the meaning of the short-haul section Mr. Blanchard says:

Traffic is received at Fort Wayne:

1. From the Wabash Railway coming from Kansas City. This allows the lowest rate east of Fort Wayne.

2. From the nearer connecting Grand Rapids road. This allows more rate east of Fort Wayne.

3. From resident forwarders. This allows the highest rate east of Fort Wayne. It is a frequent happening that there comes to Fort Wayne on the same day one car from each of these sources, none of them being handled by the railways, (because the town grain comes from an elevator), and that the three cars go in the same train from Fort Wayne to the same consignee at New York, but at the said three different rates. It is therefore all transported out of Fort Wayne under substantially like conditions. Will Senator CULLOM kindly answer the following:

1. Would the transportation circumstances and conditions be substantially the same?
2. Is or is not the same rate required from Fort Wayne on the three cars, and if not, what difference may prevail?
3. Does this refer to commercial circumstances and conditions by which each point of origin is to be considered as changing them?
4. His original bill defined this looseness by saying "from the same original points of departure, or to the same point of arrival." How is it to be read now?

My answer to the first question is that, in the case stated by Mr. Blanchard, the transportation circumstances and conditions would not be the same as to the three cars in question, because one shipment originated at Kansas City, another on the Grand Rapids road, and another at Fort Wayne.

The second question is: "Is or is not the same rate required from Fort Wayne on the three cars; and if not, what difference may prevail?"

In answer, I say that the same rate or charge is not, in my opinion, necessarily required from Fort Wayne on each of the three cars, because they do not pass "over the same line" from point of shipment to place of destination within the meaning of the bill. The line from Kansas City to New York must observe the short-haul rule, and must not charge more from Fort Wayne than from the first point on that line west of Fort Wayne to which that particular combination of carriers makes joint through rates. The combination of carriers making joint rates from points on the Grand Rapids road to New York must observe the same rule. The shipment originating at Fort Wayne would be governed by charge made from the next point west of Fort Wayne on the road between Fort Wayne and New York. The same rule must be observed in all these transactions as to each separate line, but the differences between the amounts actually received for the haul from Fort Wayne to New York in each case must depend upon the circumstances in each case.

I think Mr. Blanchard's third and fourth questions are sufficiently answered by what I have already said. In the same letter he propounds several questions to the Senator from Iowa [MR. ALLISON] which I desire to notice. He quotes the following statement which the Senator is reported to have made:

When the Boston and Albany, New York Central, and Lake Shore combine and fix a through rate from Boston to Chicago, they can not charge more between Boston and Buffalo than the aggregate charge. That gives a wide latitude. It allows a charge of as much for 50 miles as for 500, though no more.

So far as the fourth section is concerned, the Senator from Iowa is reported to have said it.

Mr. Blanchard then asks: "How can the rate from Boston to Chicago be charged to Buffalo?"

My answer is that, if the combination of carriers named by the Senator agrees upon and publishes a schedule of joint rates between Boston and Chicago, the charge made to Buffalo must not exceed the sum charged to Chicago, but it may be the same, so far as this short-haul section is concerned. The prohibition made by this section is simply against charging more in the aggregate to Buffalo than to any point beyond Buffalo on the line composed of the three roads named. The charge to Buffalo must not exceed the amount charged to Chicago; but that is not all. It must not exceed the charge to any point between Buffalo and Chi-

cago to which the combination composed of these three carriers makes joint rates.

If the charge to any of the intermediate points is less than the charge to Chicago, such smaller sum becomes the maximum amount that can be charged to Buffalo instead of the Chicago charge. This is as far as the short-haul section affects the charge to Buffalo. When a question is raised as to the right of carriers to charge as much to Buffalo as to Chicago or the next point west of Buffalo, that must be determined by the commission and the courts under the requirements of the bill that all rates must be reasonable and that no unreasonable preference must be given to any particular locality.

Mr. Blanchard's second question is: "Why is it the rate to Chicago rather than to Cleveland or Omaha which may be charged from Boston to Buffalo, and why is it any of them?"

It is to be presumed that under the requirements of the bill such joint through rates as those under consideration would be established and made public by the carriers. The illustration said to have been given by the Senator from Iowa referred to shipments over a line from Boston to Chicago composed of three railroads. The charge to Omaha does not govern the rates made on that particular line, because Omaha is not on "the same line."

The charge made to Buffalo must not exceed the charge to Chicago, nor to Toledo, nor to Cleveland, nor to Erie, nor to the first point west of Buffalo on that line to which the three carriers named make joint rates. In this case the first requirement of the short-haul section is that the charge to Buffalo shall not exceed the charge to Chicago, which would be the largest amount that could be charged. But the maximum would be decreased as the charges to points between Buffalo and Chicago decreased, so that the smallest sum charged to any point beyond Buffalo would really become the maximum amount that could be charged to Buffalo.

Again, Mr. Blanchard asks:

If they can charge as much from Boston to Buffalo as three lines combined may charge from the same or further points to Chicago, why can not the charge be as much as six lines combined from Boston to San Francisco?

There is nothing in the short-haul section standing by itself that would prevent the same charge being made from Boston to Buffalo that is made from Boston to San Francisco, if we can assume that no smaller charge is made to any point between Buffalo and San Francisco. When the six carriers combine to make joint rates between Boston and San Francisco they become a different line, and not the line that we were talking about or that the Senator from Iowa is charged with having talked about, from Boston to Chicago. The charge this different combination could make to Buffalo would be limited first by its charge to San Francisco, then by its charge to Ogden if that was less, then by its charge to Omaha if that was less, then by its charge to Chicago if that was less, and finally by the lowest charge made to any point west of Buffalo to which this combination of six carriers made and published joint rates.

DEBATE ON MR. CULLOM'S REMARKS.

MR. DAWES.—I should like to ask the Senator from Illinois for an explanation of the effect of the bill. Suppose the Boston and Albany Railroad takes freight at Albany for Boston from different lines from the West—freight from Chicago on one line, freight from Saint Louis on another, freight from Cleveland on another, and freight from Kansas City on another—if the Boston and Albany makes a different charge for the freight that it takes off from one of these lines on its way to Boston than it does from any other line, does it not subject itself to the prosecution set up in your bill?

MR. CULLOM.—I have just been discussing the very points the Senator raises.

MR. DAWES.—Probably I was out of the Senate chamber.

MR. CULLOM.—However, I have no objection to the Senator asking the question, because I want to be perfectly fair about this matter. I have undertaken to show that a line of railroad may be one line doing business by itself, having its tariff of rates for its own use, and it can control them, and that one road shall not be at liberty to charge more for the shorter than for the longer distance on the same line, in the same direction, and under the same circumstances, etc. Now, you can make a line of a dozen roads, for instance, as I said, from San Francisco to Boston, and the same rule applies as to that line, that it shall not be allowed to charge more for the shorter than for the longer distance, and so on, under similar circumstances. Suppose there are four roads coming into Buffalo. I believe that is the place the Senator named?

MR. DAWES.—No, Albany. I will explain to the Senator that Albany is where the Boston and Albany road begins. It is an independent line from there to Boston, and being in two States it is subject to all the penalties of your bill.

MR. CULLOM.—I understand. Suppose there are four roads coming to Albany, and each one of them does business with the Albany and Boston road. At the other end of its line, if you please, each one of them has its arrangements of through rates, by which, from Kansas City, the Wabash, for instance, carries freight to Albany, and on to Boston on that line; another road from Chicago carries freight from Chicago to Albany and on to Boston on that line; another one from Detroit carries freight to Albany and on to Boston on that line.

Each one of these different roads makes its own combination, its own arrangements with the Boston and Albany by which grain or other products are transported over its line from Albany to Boston; and the charge that the Albany and Boston road makes, or the agreement that it makes, if you please, with these different, separate lines has nothing to do with what it charges one or the other of them, and it has nothing to do with its own local rates from Albany to Boston.

MR. HOAR.—Except under the clause as to unjust discrimination.

MR. CULLOM.—Except under the clause relative to unjust discrimination. As I said before, the Albany and Boston road can have an arrangement with the Wabash by which grain is brought from Kansas City to Boston over its line at just whatever rate the Wabash line can agree upon, and so with each of the others.

MR. DAWES.—And they can charge a different rate?

MR. CULLOM.—They can carry the freight as they may agree to carry it, and whatever their agreement may be, it does not affect the freight that goes from Albany to Boston on that line, its own line, according to its own published rates of freight.

MR. DAWES.—Suppose it be a different rate from that for which it takes up freight at Albany and carries it to Boston?

MR. CULLOM.—It does not make the slightest difference in the world; it has nothing to do with it. One is a line of railroad by itself, the other is a line of railroad in conjunction with one, two, or five others, if you please, and the one rate does not control the others. In other words, as I have said over and over again, the percentage that the Boston and Albany road gets for carrying the products that are brought from the far west to Boston after they reach Albany has nothing to do with regulating the rates from Albany to Boston over that road.

MR. DAWES.—Do you find that in the letter of your bill, or do you think that ought to be the construction of it?

MR. CULLOM.—I think that is a reasonable construction of the bill, and I have no question myself but that the courts and the commission would construe it that way. The letter of the bill will sustain that construction of it, I think.

MR. ALDRICH.—It is of the utmost importance that we as well as the business community should understand the construction the committee put upon this bill. I wish to ask the Senator from Illinois one or two questions in this connection, so that we may understand fully just what the committee understand to be the meaning of this section.

As I understand him, if a combination of roads agree to carry freight from San Francisco to New York at \$1 a hundred pounds, that rate is the only limitation which that particular transaction makes upon any intermediate rates between San Francisco and New York. Do I understand that to be the Senator's construction?

MR. CULLOM.—Ask that question again.

MR. ALDRICH.—In the case of a contract for the transportation of freight from San Francisco to New York at an agreed rate of \$1 per 100 pounds, that rate of \$1 per 100 pounds is the only limitation which that transaction fixes upon any intermediate transportation or upon transportation between any intermediate points between San Francisco and New York?

MR. HARRIS.—Will the Senator from Illinois allow me to answer that particular question of the Senator from Rhode Island?

MR. ALDRICH.—I was only trying to find out whether that was what the Senator from Illinois had stated. I understood him to state that.

MR. HARRIS.—The statement of the Senator from Illinois on that point, as I understood him—and I think I understood him clearly and correctly—was this: Here are four distinct and independent lines of railroad between New York and San Francisco; first, the Pennsylvania—

MR. ALDRICH.—I am talking about the same line. Take one of the lines.

MR. HARRIS.—There is a line composed of four distinct and independent lines.

MR. ALDRICH.—Take one of them.

MR. HARRIS.—It becomes one line by a contract and agreement between these four separate, distinct, and independent companies.

Now, to answer the question and to illustrate, assume that by contract upon the long line from New York to San Francisco, composed of four independent, distinct lines becoming one by contract and agreement with the owners of these four lines for specific purposes and a specific character of freight, that line agrees to haul a car-load of grain or other freight from San Francisco to New York, say, for \$100.

MR. ALDRICH.—One dollar per hundred pounds, I said.

MR. HARRIS.—Very well ; but one hundred dollars illustrates the principle just as well, taking the freight by the car-load instead of a hundred pounds. Now, \$100 is the through rate from San Francisco to New York. By agreement each of those four companies agrees to accept \$25 apiece, making the hundred. If they agree only for through freights, if this agreement extends only for through freights from San Francisco to New York the hundred dollars a car-load would be the maximum long-haul charge, and it would be the maximum of any short-haul that passes over two or more of those roads. But suppose by contract the parties agree to carry from San Francisco to New York at \$100 a car, from Ogden to New York at \$75 a car, from Omaha to New York at \$50 a car, then the rule would be from Ogden to New York, that is from any point east of Ogden to New York, they could not charge more than \$75. The rule would be from Omaha to New York, from any point east of Omaha to New York, they could not charge more than \$50.

MR. ALDRICH.—What I want to get at is the understanding of the committee. Could this same line charge \$99 from Ogden, and from Omaha, and from Chicago, and from Cleveland, and from Buffalo to New York ? So far as the limitations of the section are concerned, would they be allowed to charge \$99 per car-load, say, from Buffalo to New York ?

MR. SPOONER.—They must charge a reasonable rate.

MR. ALDRICH.—As I understand the fourth section, so far as distance is concerned, it undertakes to fix what is a reasonable rate. That is another part of the bill ; but this section of the bill, if I understand it at all, undertakes to construe the difference of distance into what is reasonable.

MR. CULLOM.—It does not do any such thing.

MR. HARRIS.—If the Senator will allow me to suggest it to him, in as explicit terms as language will permit, each common carrier is not only authorized but required to classify and fix the rates upon the road.

MR. ALDRICH.—That is another section. I am speaking now about the provision of the fourth section and only the fourth section of the bill.

MR. HARRIS. I answer the declaration of the Senator that this bill would have to determine what was a reasonable rate.

MR. ALDRICH. Is there anything that does it, I ask, so far as this section of the bill is concerned ? The Senator from Illinois does not understand it that way ; and I resume, if the Senator pleases, and ask him to answer my question.

MR. HARRIS. I yield to the Senator from Illinois.

MR. ALDRICH. I mean the Senator from Tennessee. My question is whether under the provision of this section there is anything which would prevent this same line from charging \$99 a car (certainly it can not charge as much as \$100) from each one of the points to which I have alluded.

MR. HARRIS. If I was understood, I answered that question a few moments since, but I will repeat my answer, as I see that I, perhaps, was not understood. This long line becomes a distinctive carrier by contract, composed of four distinct and independent railroads. If the contract provides for the carrying of freight simply from San Francisco to New York and the contract stops there, it is a line for a specific purpose and for no other purpose.

MR. ALDRICH. In other words, it is a contract.

MR. HARRIS. And if that be true, then there is no reason to be found in this bill why they may not charge from any intermediate point up to the maximum, except that the charge must be reasonable.

MR. ALDRICH. As I understand the Senator now, he says that that understanding and agreement constitutes a line of itself for through business from San Francisco to New York.

MR. HARRIS. So it does.

MR. ALDRICH. And that an agreement from Sacramento to New York would constitute a new line with the right to make a new contract not dependent upon the other. Is that true? I ask that question and I should like an answer.

MR. HARRIS. If the contract fixes a different rate and a lower rate —

MR. ALDRICH. It is another line. Does it constitute another line within the meaning of the bill which entitles them to make another and a different contract?

MR. HARRIS. Upon the contrary, I think it is the same line created by contract and composed of four distinct lines.

MR. HOAR. Suppose three of those four make a contract with their three roads, the Senator from Rhode Island wants to know whether that makes a different line, one line of the four roads and another of the three?

MR. HARRIS. I can see no reason why three of the lines may not transact among themselves, for —

MR. ALDRICH. I understood the Senator from Tennessee to say distinctly that a contract from San Francisco for through freight constituted that line a line only for that purpose, and that it did not put any limitation at all upon other contracts from intermediate points. What I want to find out is whether at Sacramento they would have a right to make a new contract, ignoring the provisions and limitations of the original contract from San Francisco.

MR. HOAR. And make a new line and charge more?

MR. ALDRICH. Yes; can they make a new line of three? That is the point I am coming at exactly. Here are between New York and San Francisco ten different railroad companies, who have joined in a contract which constitutes according to the Senator from Illinois and the Senator from Tennessee, a distinct, separate line from San Francisco to

New York. Now is it a new line when nine of those join in that contract, and are they exempted from the provisions and limitations which apply to the line of ten companies; and if eight, if seven, if six, can each one of these companies make a new contract with new rates which have no limitations or relations to the nine or ten? That is what the Senator from Illinois said — that then you can fix your rates entirely separate and apart from the line. If these are separate and distinct lines, nine can charge more than ten; eight can charge more than ten; seven can charge more than ten, until you get down to two, and they can charge more than ten, and then you have only one line.

That is the point I was coming at exactly—whether each one of these various companies forming a line in itself was affected at all by the limitations which were fixed by a large combination that included the whole. I understood the Senator from Illinois to say distinctly they were not so bound, and that there was no limitation by this bill in the through rates upon smaller lines. For instance, if four roads between Chicago and New York charge one sum, it would not prevent three roads from Buffalo from charging twice as much, or three roads between Cleveland and New York from charging three times as much. It is not a question of business. I am trying to get at what construction the committee places on this section.

MR. HARRIS. You mean three different roads from those I have mentioned as constituting the long line from San Francisco?

MR. ALDRICH. No, I mean three of the same roads which made up the four in the original line.

MR. HARRIS. Three of the same roads would not reach the same point; they would not reach San Francisco.

MR. ALDRICH. They would reach an intermediate point.

MR. HOAR. They are links in the same chain.

MR. ALDRICH. They are three links of the same long chain which you have drawn out.

MR. HARRIS. The case I put originally, it seems to me, clearly and distinctly answers the Senator's question. If this long line, being constituted with four separate, distinct, and independent lines, has contracted for through freights and for through freights only, I do not see that their contracts or the existence of that line would affect any other than the through shipments; but if in their contract constituting that long line composed of the four distinct lines they fix one rate from San Francisco to New York, another from Ogden to New York, another from Omaha to New York, or any of the intermediate points, including more than one of the lines to carry the freights, then the short-haul provision would apply to the maximum charge fixed by that agreement, fixed by that line upon which the freights were to be transported.

MR. ALDRICH. That is the question which I meant to ask the Senator from Tennessee in the first instance, and I think he has answered it now. It was, that if this constitutes one through line from San Francisco to New York, as I now understand him, they could fix a rate of \$100 a car from San Francisco, and \$99 a car from all the intermediate points under the provisions of this section of the bill.

MR. CAMDEN. There is no doubt about that.

MR. ALDRICH. Is that what the Senator from Tennessee meant to say?

MR. HARRIS. If they provide for but one rate, and that an entire through rate, then the maximum charge of the through rate would be \$100, and, so far as the fourth section is concerned, the maximum charge for the short haul could not exceed a hundred dollars.

MR. ALDRICH.—It could come anywhere within the whole charge?

MR. HARRIS.—Not exactly anywhere within the whole charge. That is to say, whenever you come to freights that begin and end on one line of road, that is, on one interstate railroad, then the rates fixed by that railroad apply, and not the rates fixed by contracts with any other roads.

MR. STANFORD obtained the floor.

MR. HOAR.—I should like, with the leave of the Senator from California, to ask one question of the Senator from Tennessee. That is, whether he agrees with the Senator from Illinois that the mere destination, that is freight being carried to a foreign point or to a domestic point, the case I put to him, constitutes a difference of circumstances and conditions under this bill?

MR. HARRIS.—In answer to the suggestion of the Senator from Massachusetts, I desire to say to him that as a legislator I do not think it concerns me to determine the conclusion of fact as to what would constitute similar conditions and circumstances. That is a fact to be ascertained by the commission, if appealed to, or decided by the common carrier and to be complained of if he decides it incorrectly; and the commission will then investigate the question and determine whether the conditions and circumstances are similar in a given case put.

MR. HOAR.—But does the Senator mean to say that being able to maintain a great foreign commerce, millions upon millions, it ought to be dependent upon the opinion of the five commissioners and not to be fixed by the law-making power, so that in voting for this measure he has not an opinion as to whether that thing should continue?

MR. HARRIS.—I mean to say that whatever effect may be wrought upon any given commercial point by the establishment of a correct rule of transportation, the correctness and fairness and justice of the rule should determine it, and not the interest of the locality in question; and I mean to say in addition that it is very difficult, in my opinion, to establish the justice of a given carrier charging more for carrying a load of the same character of freight, and at the same time, and under substantially the same circumstances, over one-half of its road than it charges for carrying the same over the whole length of its line. If the adoption and maintenance of that rule shall work prejudice to the trade of any given locality, it is the misfortune of that locality, and it ought to be made the misfortune of the locality and not made the misfortune of all the people who chance to live at non-competitive points along the line of the road.

MR. HOAR.—I can not see any misfortune to anybody else. It does not hurt the other people any.

MR. ALDRICH.—Will the Senator from California let me ask the Senator from Tennessee just one more question?

MR. STANFORD.—Certainly.

MR. ALDRICH.—I desire to know whether he agrees with the Senator from Illinois that where in case the short haul is to a non-competitive point and the longer haul to a competitive point, that constitutes such a

dissimilarity of circumstances and conditions as would allow the railroad company to charge a greater sum for the shorter haul?

MR. CULLOM.—The Senator from Rhode Island will pardon me. The Senator from Illinois made no such declaration.

MR. ALDRICH.—I certainly understood him to make exactly that declaration in answer to the Senator from Mississippi [MR. GEORGE].

MR. CULLOM.—Will the Senator allow me to interrupt him?

MR. ALDRICH.—Of course.

MR. CULLOM.—The Senator from Illinois said that the question of conditions and circumstances necessarily would be taken into consideration as between the competitive and the non-competitive points. The Senator from Illinois gave no opinion upon the question as to what the decision should decide.

MR. ALDRICH.—I understood him to make the statement I attributed to him.

MR. CULLOM.—While I am upon the floor I wish to say another thing. The Senator from Massachusetts objects to the construction of this subject being left in any degree to a commission.

MR. HOAR.—No; but that part of it.

MR. CULLOM.—I refer to the question whether the foreign commerce of the country should be interfered with or not. All I desire to say is that the best we can do is to pass the best bill we can, and it is for the commission and the railroads and the courts to construe it afterward. We are compelled to leave it to the common carriers and then to the commission, if one is created, and at last to the courts to determine what the proper construction of the law that we shall pass may be.

MR. ALDRICH.—As the Senator from Illinois says that he did not make that statement, I now ask him what his opinion is upon that question, if he has any, and I should like also to get the opinion of his colleagues on the committee.

MR. CULLOM.—I will simply say in answer to the Senator from Rhode Island that he seems to be exceedingly anxious to in some way make the bill which is before the Senate offensive to the people of this country, but I repeat that any court or any commission which had the construction of this section to pass upon would be required to take into account the language used, the place, the circumstances, and all together as to what those words should mean in determining whether a competitive point should have any advantage over a non-competitive point.

MR. CAMDEN.—If the Senator from Rhode Island will allow me I will answer his question.

MR. ALDRICH.—I desired an *ex cathedra* answer from the committee who made this report.

MR. HARRIS.—If the Senator wants my opinion he shall have exactly what I understand it to mean.

MR. ALDRICH.—I do.

MR. HARRIS.—I favored the short-haul provision from the beginning, and did so for this reason: As a general rule the shipper from a competitive point has a measure of protection, at least, by the competition that exists there.

MR. ALDRICH.—How if the shippers there can not get any lower rates?

MR. HARRIS.—But the shipper from a point non-competitive, where he must accept the terms of the carrier or allow his produce to perish upon his hands, is the shipper whom I wanted a short-haul law to protect.

MR. CAMDEN.—That is the very object of the provision.

MR. HARRIS.—That is the very object with me, at least, in having insisted from the moment I entered the interstate commerce committee, and I continue up to this moment and shall continue to insist upon a short-haul provision, so as to give the shipper from the non-competitive point some protection against unreasonable and unjust exactions; and for another reason: Take Chicago, for instance, as a competitive point. When rate wars may rage and drive through freights down to an unreasonable point, if the competing carriers there know that, however low they may put their rates from Chicago to New York, they can not charge an aggregate sum greater for any shorter haul between Chicago and New York, it will do more to restrain and to prevent rate wars than all your pooling contracts have ever done or will ever do.

MR. ALDRICH.—Does the Senator from Tennessee expect that those results will ever accrue from the passage of this bill?

MR. HARRIS.—The protection of the shipper from non-competitive points?

MR. ALDRICH.—Yes.

MR. HARRIS.—I not only expect, but I am confident that it will accrue from this bill.

MR. ALDRICH.—I have received an answer, so far as the Senator from Tennessee is concerned, but I do not understand that the Senator from Illinois makes any answer to the question.

REMARKS OF MR. STANFORD.

IN THE U. S. SENATE JANUARY 10, 1887.

THE PRESIDENT *pro tempore*.—The Senator from California [MR. STANFORD] has the floor.

MR. STANFORD.—Mr. President, I shall speak to this bill as I understand it. In what I shall have to say upon the measure I shall endeavor to be entirely candid and correct. The importance of the subject is so great that it can only be permanently settled upon right principles. Anything else means renewed and continued disturbance. The bill under consideration provides for a regulation of one species of property not common to others. To see how far this is justifiable, it is well for us to consider the creation of railroads, and to understand how they are created.

Railroad companies are organized under the general laws of the different States. They have no exclusive privileges. They are associations aided by these general laws—laws of which every citizen, or any number of citizens, may avail themselves equally with those forming the railroad company. In the mere fact of association they may exist entirely without the aid of the State. The association is as natural as it is for one man to call in his neighbors to help him raise his barn, or to roll a saw-log, or to do any business not inconsistent with the rights of others. The State gives, by virtue of the incorporation laws, nothing to the incorporation. Whatever of capital or labor that is contributed to them is entirely private.

The ownership of the labor and capital provided is private; as much so as the banker's ownership of his money, the farmer's ownership of his farm, the teamster's ownership of his team, and so on.

It is private labor that builds the railroad from the first shovelful of dirt that is thrown until the last spike is driven and the road is ready for business; and then, when it is ready to operate, it is all the product of individual or private property.

But some will say the right of way was given. In regard to that I think there is much misapprehension. Those who desire to build a railroad, of course, must in some manner obtain the right of way on which to build it. They appeal to the State on the ground that the proposed investment is of a highly beneficial character to the public, and they ask the State to exercise its right of eminent domain in order that the road may be built. The State only can exercise the right of eminent domain for the benefit of the public, and then upon just compensation to be made to the owner for whatever is taken. The State could not take private property for the benefit of A, B, C, D, E, F, and others.

Now, up to this time everything in the railroad has come from private sources, and the labor belongs to the individuals as much as the labor of the man who tills a farm.

Control is the essence of ownership. The value of the property is its income-producing quality. This bill strikes at the control, and directly affects the income-producing capacity of the properties. Now, if the investment is legitimate, if its nature is so highly beneficial that the State can do, to aid its construction, what it could not do for the establishment of a factory or any other legitimate business, wherein is the reason for the interference with the values and the control of this property? No monopoly is given it; it interferes with no rights previously existing, and is never used except when it offers advantages to the shipper or traveler superior to those existing before. If it is a monopoly it is only a beneficent one, cheapening and facilitating travel and commerce.

Now, if the State has given nothing to this railroad company but what it gives to every other citizen; if it has put no money in; if the company has no monopoly; if its services are necessarily of a beneficial character, why should the State interfere with its ownership and with its income-producing quality? And if the State, or if Congress, impairs the value of this property, why should not compensation be made to the owners, and, before putting into operation a law that will affect values, ought not compensation to be made as is done when the Government exercises its right of eminent domain and condemns the property of A that the road may be built which the company pays for? By a reduction of income-producing qualities the value of the very right of way which the railroad company has paid for is affected.

The geography and topography of the country make competition a certainty. This bill denies to the railroad the right to charge less for the greater distance than for the shorter. I do not suppose that any railroad company ever carried freight or passengers for the longer distance for less than for the shorter unless competition, or some other circumstance beyond the control of the company, compelled. The only alternative would be to yield the business. It is a principle in good railroading to reject no business that offers if it can possibly be done, so long as it will pay the additional expense consequent upon its own movement. A very large portion of the traffic of the country is done below the average cost. The fixed expenses and the semi-fixed expenses of a railroad company are very large. They, as well as the operating expenses, are included to make the average cost of movement.

The average of operating expenses per ton is a very different figure from that of the average cost per ton, the latter including operating expenses, fixed expenses, and semi-fixed expenses. Thus, take the business from the Atlantic to the Pacific, or from the Pacific to the Atlantic, and we find competition by the Isthmus of Panama and competition by Cape Horn; we find overland routes of different length, of different grades and curves, varying in volume of business and in expenses of operating. We have very different average expense for movement. The longer road must compete with the shorter. The road with the heaviest gradients must compete with the road of easier. The road having a small volume of business must compete with the road having a large volume of business. The cost of fuel is a very important item, varying on the different railroads. Yet the road having the lesser volume of business, the road having the longest line, having the heaviest grades and curves, having the higher cost of fuel, will be in competition with and will

have to carry as cheap as one having the shorter line, the easiest gradients, the cheapest fuel, and the largest volume of business.

All these are factors that determine the rates at which the railroad may possibly do business, however meager the profits. All the overland lines of railroad find their rates very largely controlled or influenced by the routes by way of the Isthmus of Panama and of Cape Horn; meeting that competition, and being willing to accept a small profit where a larger can not be had, they carry along the line between the two extreme points the same character of freight at less rates than it is carried from east to west, or from west to east, to intermediate places. Thus, because of competition, freight going from New York to San Francisco may pass over the various lines of road making up a through line for, perhaps, half their regular rates, say from New York to Buffalo, from Buffalo to Chicago, from Chicago to Omaha, from Omaha to Salt Lake, and so on to destination on the Pacific coast. No profit is so small as to be despised. Business is done at that rate rather than not do it at all.

Take a more marked illustration. The Southern Pacific road strikes the Atlantic waters at a much less distance than any of its more northern competitors. It has a line of easy gradients comparatively, and it competes not only with its northern rivals, but more particularly with the Cape Horn and Isthmus of Panama routes, because of its shorter line and easy gradients. In this competition it often takes freight between the two oceans as low as \$10, while it takes freight half way for, say, \$30 a ton, a most reasonable rate for the limited local business of that country. Now, if it makes only a dollar net on the freight from San Francisco to New Orleans at \$10, it is glad to make that dollar where it can get no more; but a ton of freight going to El Paso, something over half the distance, will pay \$30 a ton. Now, if the freight at \$10 to New Orleans pays \$1 profit, the freight going a less distance, to El Paso, would pay as much profit as 21 tons going through to New Orleans; and the rates charged to El Paso are but fair, as is shown by the gross earnings and the gross expenses of the road, leaving but a very narrow net profit.

The shorter distance is not charged any more because of the less rate for the longer distance. Indeed the longer distance helps the railroad company to maintain itself, while without that help perhaps they could not do the shorter business at all. Is this Congress prepared to say that small earnings shall be despised, that they shall not be secured when greater can not be had? Are they prepared to deny to individual shippers and communities the benefit of their more favorable location, whether made so because of the geography and topography of the country or by artificial means? It is the misfortune of some places not to be so well located and not the fault of the more favorable places that nature or art has given them superior advantages. It seems to me that Congress might with equal propriety deny the shipper the right to avail himself of these natural or artificial advantages as to deny to the railroad the right to avail itself of opportunities to meet competition.

There is a class of freight that can stand only a certain charge. A greater charge becomes prohibitory. A very large part of the unmanufactured raw material of this country belongs to this class, paying a trifle over the additional cost consequent upon its movement, developing a business that may pay better, and giving its small portion of net profit

above the cost of movement towards the large items of fixed and semi-fixed expenses. Whether a road is doing a profitable business or not is not determined by the percentage of operating expenses. Thus a road carrying valuable goods and doing a small business may find its percentage of operating expenses upon the amount earned very small, whereas, if there could be thrown upon it in addition a large business of cheap transportation, its earnings would be larger, but the per cent of operating expenses would be increased; and to the extent that there was a net earning on this cheap class of freight just so far the company would be benefited. The long haul at cheap competing rates is really beneficial to the short haul at non-competing rates. It may be that neither alone would maintain the road. If I understand this bill correctly, under it the long lines of railroad passing through different States will have to give up one or the other. It will be practically a regulation of freight within the boundaries of a State and making a barrier of the boundary of a State to the free transmission of commerce.

Since the first road was built in the United States up to this time the railroads have substantially fixed their own rates for service, until to-day the rate is such as was not dreamed of as possible twenty years ago, nor was it believed possible even ten years ago. The whole country is developed. No product has suffered for want of movement. The general railroad management of the country is careful to consider what the cheap unmanufactured products of the country can afford to pay, and make their rates with a view that production shall not be hindered. The rates charged for manufactured goods, almost without an exception, do not affect the producer or the consumer. If the rates of freight upon manufactured articles were reduced one-half, the probability is that there is nothing that moves by railroad over the longest line in the country whose price to the consumer would be affected or would be taken into consideration by the manufacturer; but the fractional part of a cent becomes a serious consequence in the long haul to most of the raw products of the country. The higher the maximums the lower the possible minimums.

Thus, in my own State, the maximum rates were 15 cents per ton per mile. With an average cost of 2 cents a mile for movement, which was about the average at one time, 1 ton of freight moved at 15 cents a ton per mile, would enable the railroad to move 14 tons at the minimum rate of 1 cent a ton per mile. There was at that time about 1 per cent. of the business done at the maximum rate, while the other 99 per cent. was done at rates governed by circumstances and influences which the railroad company could not control.

This bill seems to me not only to deny competition by railroads, which exist almost throughout the length and breadth of the country, but to exhibit a tendency to foster water ways to the positive discouragement of the railroad interests. If it aimed but to insure the water lines of communication against the competition of rails, I do not know how a bill could be framed to secure that object better than this one. If railroading is a legitimate business, and if it is only the aggregate of the private property contributed by the stockholders; if it is maintained and operated by the labor of individuals, what justification there can be for depriving the owners of control, and the property of its full earning capacity within the laws as they existed at the time of the original invest-

ments, I am unable to see. It seems to me, clearly it is a violation of the rights of property, and the rights of the laborer to receive a compensation for services performed.

It is also a discouragement of this class of investments. The railroads up to this time have received the peculiar indorsement of being of such a highly beneficial character that the State could exercise the right of eminent domain to the end that the road might be built. If this bill shall become a law its consequences will be most disastrous, in my judgment, to the varied business interests of the country. When you think that most of the products of the country pass one or more times over its railroads, of the many thousands of people who are engaged in their operation, the many more thousands whose calling depends upon these roads, and the vast volume of business and its great value that moves over them, it seems to me that Congress ought to consider with great care how far these investments, these industries of all kinds may be disturbed. That they will be largely disturbed it seems to me must be plain to the dullest comprehension. While the railroad companies have practically been as free to manage their business under the common law as those engaged in other callings the country has prospered, accommodations have been given and are given that promote the prosperity of every industry. There has been no taking of property without compensation, no control without ownership, and the anarchists in the history of the country have thus far found little justification in the example of the Government for violent taking of property. There can be no valid objection to police regulation, but only to that attempted regulation which goes to and affects values directly and inevitably.

FINAL REMARKS OF MR. CULLOM.

IN THE U. S. SENATE, JANUARY 14, 1887.

MR. CULLOM. Mr. President, I feel that I ought to say something in reference to this bill before the vote is taken. I believe no other Senator has indicated a desire to speak. I have great reluctance to saying anything upon the subject myself at this late hour in the night, and I promise the Senate that I shall detain them but a very few minutes, and will then allow the vote to be taken.

I have been sitting here to-day listening to assaults upon this bill until I have almost become convinced that I am the most vicious man toward the railroads of any man I know. I started in upon the investigation of this subject two or three years ago with no prejudices, no bias of sentiment or judgment, no disposition whatever to do anything except that which my deliberate judgment told me was the best thing to do. I have believed that I occupied that position ever since until within the last twenty-four hours, when the attacks upon this bill have been such that I have become a little doubtful whether I have not been inspired from the beginning, so far as my action has been concerned, with a determination to destroy the railroads of this country. To listen to the Senator from Alabama [MR. MORGAN] descanting upon the provisions of the bill, one can scarcely resist the conclusion that it is a bill to destroy the commerce of the country, and especially to break down all the railroads.

So far as I am concerned, I repeat I have had no disposition of that kind, and I am unaware that either of the Senators upon the conference committee with me has had any such disposition. We tried to do the best we could with the bill that the Senate passed during the last session, to keep the bill as near to what the Senate had it as we could do, and to arrive at an agreement between the House and the Senate conferees.

I submit that the majority of the assaults on the bill now under consideration have been against provisions that were in the bill when the Senate voted for it during the last session of Congress. I am of the opinion that if this discussion lasted another day Senators would find in every line of the bill a very serious objection to its adoption. They started in by objecting to some portions of the fourth and fifth sections. The Senator who has just concluded his remarks got over to the thirteenth section, and I believe went one or two sections beyond that, and if there were any more speeches to be made against the bill I suppose the very last section of it would be attacked before a vote was taken.

The Senate conferees regarded it as their duty to cling to every portion of the Senate bill as it was passed that they could cling to and reach an agreement between the conferees of the House and the Senate. Hence it was that all those portions of the Senate bill not objected to by the

House conferees were allowed to remain in the bill by the Senate conferees, the Senate conferees, as a matter of course, believing that the Senate of the United States knew what it was doing when it voted for the bill in the first place, and thinking that it would remain of the same mind still.

The attacks upon the fourth section have not been based so much upon the changes the conference committee made in that section as upon the language which was placed there by the Senate of the United States by its vote; and yet the conferees of the Senate have been regarded as at fault, to say the least, because they did not strike out the words which the Senate had put in.

The Senator from Georgia [MR. BROWN] assaults the bill because he says that under it the provisions are so rigid that the railroads of the country can not do business at all. The Senator from Oregon [MR. MITCHELL] assaults the bill because, he says, the fourth section amounts to nothing, and that the words "under like circumstances and conditions" ought to be taken out.

The Senator from Massachusetts [MR. HOAR] assaults the bill because, he says, it is going to interfere with foreign commerce, and that the fourth section will be construed as not allowing a rebate of 5 cents a hundred upon commerce shipped across the country for exportation. So he thinks the bill ought not to be agreed to, while, except as to the words "from the same original point of departure" and "the same point of arrival," the section is substantially just the same as it was when it passed the Senate before.

So I might go on referring to every Senator who has spoken against the bill, and nearly every one of them has founded his objections to the bill upon the use of language that he had previously voted for in the Senate of the United States before the bill went to the conference committee at all.

I shall detain the Senate only a few moments, but I desire to reiterate what I uttered upon the subject before, confining myself to the short-haul provision which is contained in the fourth section of the bill. The Senator from Massachusetts and others have arraigned me as having placed a construction upon the bill different from the other conferees on the part of the Senate as to the question whether in a line made up of a number of roads the proportion that one road was to get was a criterion by which it should be governed in the charges over its own road according to the published rates made out by the road itself.

In other words, as I said before, taking the Albany and Boston road as an illustration, it may take freight from Kansas City, from Chicago, from Detroit, or from any other point coming in on different lines, and the rate per cent. that it gets of that through traffic has no control whatever over the charges that it sees proper to make over its own line and over the freight that it gets along its line. The conferees on the part of the Senate agree with me in that proposition, and when you agree that that is the right construction to be placed upon the bill, then I say that all this long-haul business that goes from west to east or from east to west is not seriously affected by the provisions of the fourth section.

The Senator from Massachusetts has been apparently disposed to kill the bill by taking depositions of different parties over the country

and of the conferees on the part of the House. I submit that the answer by Judge CRISP to the questions put to him by the Senator from Massachusetts is not conclusive upon the point that we have been insisting upon. Judge CRISP does not say in any line or word employed by him that the construction placed upon that provision by the Senate conferees is different from what we have stated upon this floor. The only thing that that conferee says in reference to it about which there might be any difference is simply as to the meaning of the words "under like conditions and circumstances."

I have not said that upon any given statement of facts as put to me by any member of the Senate the bill meant one thing or the other; but I have said, and I submit that any candid man must agree with me, that in the construction of the proposed statute, in the application to the transportation of freight from one part of the country to another, where the words "under like circumstances and conditions" are used, they must be considered as an element in determining whether a shipment of freight from one point is to be governed by the same rule that governs it as to charges from another point. That is all I have contended for. Judge CRISP expressed the opinion on the state of facts put by the Senator from Massachusetts to him, that the circumstances under the bill, as he construed it, would be the same. We might differ upon that point or we might not, but it is no ground for declaring that the conference committee, either on the part of the Senate or the House, disagree as to the meaning of the provisions of the bill.

Mr. President, I do not believe that I ought to talk about this measure any longer, because I know every Senator wants to vote, and I suppose if I talked here two hours what I might say would not change a vote in the Senate.

MR. SEWELL. Will the Senator allow me to ask him one question?

MR. CULLOM. Certainly.

MR. SEWELL. I desire to satisfy my own mind before voting on the bill. Suppose a merchant in New York, a grain shipper, orders, as is frequently done, two or three million bushels of wheat, taking advantage of the markets of Europe and watching closely the shipments from the Black Sea and other ports, and also the Indian market. He finds that he can make 2 or 3 cents a bushel by the shipment of a large lot of wheat. He will order from Duluth half a million bushels, from Milwaukee half a million bushels, from Chicago half a million bushels, from St. Louis half a million bushels, dividing his order. If the wheat is shipped by car-loads under similar circumstances in every particular, even under the same ownership and at the same time, and it may all arrive at Buffalo or at a point on the Pennsylvania Railroad, the pro rata on one shipment allowed to the trunk lines, taking the New York Central, for instance, going to Boston, but going through New York, that coming from Duluth may come at 10 cents a hundred; that coming from Milwaukee may come at 9; that coming from Chicago, being the greatest point of competition, may come at 8, and from St. Louis may come at 9 or 10.

All this being similar freight under like circumstances, by the same ownership, in car-loads arriving at the trunk-line point at the same time, the company having accepted the lowest rate—that is, where the greatest

competition is, say at Chicago—can that railroad company take any more for any of the freight that comes off the other lines for the same party?

MR. CULLOM. The Senator's question is pretty long. I have asserted the proposition that a proper construction of the bill gives to railroads the right to make combinations or arrangements for a continuous shipment. One railroad makes its own tariff rate, another railroad makes its, and the third makes its tariff of rates, and each one of those roads, so far as its own business is concerned, is to be governed by that tariff of rates.

But here come two roads, or four roads, converging into one, if you please. It is the very same illustration that I gave the other day. One line is composed of roads from Kansas City to Boston by way of Albany; another line is composed of the roads from Chicago to Boston by way of Albany; a third line is composed of a railroad or railroads from Detroit to Boston by way of Albany, and so you may go on. I assert that the rate of one of those lines beginning at Kansas City, if you please, and running to Boston, has nothing to do with the rate of the road that begins at Chicago and goes to Boston, or from Detroit and goes to Boston. In other words, those continuous routes make their own arrangements, just what they please, so far as any other road is concerned, and they are bound thereby, but the other roads are not. So in a shipment from Kansas City to Albany and to Boston, if the Albany and Boston road only got 2 cents for carrying it from Albany to Boston, it would not interfere with its right to get 5 cents on the line carrying it from Chicago to Boston by way of Albany, or whatever other sum it might arrange with the other roads.

MR. SEWELL. The Senator evades the direct question.

MR. CULLOM. I think not.

MR. SEWELL. My point was the same ownership, the same individual making all these shipments, and the shipments converging on the same line.

MR. CULLOM. Does the Senator mean the same ownership of property; the same freight?

MR. SEWELL. Yes, sir; I mean that a commission merchant in New York will order two or three million bushels from different points, and that freight will converge from different lines. I say under the restriction of this bill that, having accepted the lowest pro rata rate on that portion of the line, the company is restricted from taking a higher rate, although the pro rata would allow it.

MR. CULLOM. I contend exactly the contrary in my view of the construction of the section. I imagine that any other construction of it would bring upon the railroads and upon the country great confusion. It does not make any difference what the railroad from Chicago to Boston charges if it is one line, or what the railroad from Kansas City to Boston charges if it makes another continuous line. I repeat that the per cent. the railroad gets from Albany to Boston on the shipment from Chicago to Boston has nothing to do with the per cent. that it gets on the line from Kansas City to Boston.

This is the whole case. So the argument of the Senator from Rhode Island [MR. ALDRICH] with his chart amounts to nothing if my construction and the construction of the conferees on the part of the Senate is to

be taken as the correct view of the bill. That is what I contend for, and you can not put any other construction upon it consistent with the business of the country and with the language of the bill itself.

The Senator from Alabama [MR. MORGAN] is very much exercised on account of the extraordinary powers that are given by the bill, and on account of the difference of opinion which seems to prevail in the Senate as to the meaning of the language of the fourth section and other portions of the bill. He says that the Supreme Court oscillates in its opinions upon statutes from year to year. That is true; there is no doubt about it. So if the Supreme Court of the United States has one opinion one year and possibly modifies it another, it is not surprising that any language which may be incorporated in any bill brought in here upon this subject will be differently construed by different Senators upon this floor.

I undertake to say that there are not three men in the Senate who can draught a provision into this bill incorporating the ideas of the fourth section, or upon the short-haul question at all, that will be construed alike by every member of the Senate. I defy any one to do it. We have never supposed until to-day that any man on earth could misconstrue the language when it says that you shall not charge more in the aggregate for the short haul than for the long haul on the same line and going in the same direction, and yet the Senator from Georgia comes in here with a telegraphic account of a decision in North Carolina, which says that those words which everybody here, I think, agreed meant in the aggregate, and not a pro rata per mile per ton, do not even mean what we have all understood them to mean before.

So you see that you may use the plainest language that can be written, and yet courts as well as Senators may differ as to the construction of the language when it comes to be applied to the transportation of the country. It is a pretty difficult thing. I have done my best in trying to get something that the country could understand, and at the same time do something that would benefit the people of this country, but I begin to think that I have made an utter failure in getting anything at all that any one ever can understand to mean what I supposed it meant.

The Senator from Alabama refers to the extraordinary powers of the commission to the fact that the testimony taken by the commission is to be *prima facie* evidence of the truthfulness of the testimony in a court of record. This is not extraordinary. Take some of the State laws of the country to-day. Take the State of Illinois, for instance. The commission of the State of Illinois makes out a freight bill and publishes it. It becomes the law until it is overturned by proof produced by a transportation company that the rates which are fixed in the freight bill are not reasonable and just.

The provision making the testimony taken by the commission as to the conduct of a common carrier *prima facie* evidence is based on the fact that, as we all know, the railroads have locked up within their own control and their own knowledge all the facts which operate on them in making any given rate, and there is no way to get at the facts except by throwing the onus of proof upon them that the rates which they charge

are reasonable and not unreasonable and unjust. Is there anything wrong in that?

While I am talking about that I desire to say that one of the ablest railroad commissions in the United States is the railroad commission in New York. The chairman of that commission, Mr. Kernan, a very able lawyer and a very able commissioner, insisted before the select committee of the Senate that unless we did something of that sort the railroads would beat the people every time in a controversy between the railroads and the individual shipper as to whether the rate was reasonable and just or not.

So we incorporated that provision in the bill, but there has been no disposition on the part of the Senate committee, in the first place, or on the part of the conferees, in the second place, to insert any undue provision in the bill that was going to do a great injury to the corporations of the country. That provision, too, was in the bill reported by the select committee of the Senate, discussed here for a month or two during the last session of Congress, and voted in by the Senate of the United States; and yet the conferees of the Senate are berated to-day because there is such a provision in the bill, and that, too, it is said, has come from the conference committee.

The trouble about this whole thing, Mr. President, is in the fact that hardly anybody believed there was going to be an interstate-commerce bill passed by this Congress until the conference committee reported. When I say hardly anybody, I refer to the men who did not believe in any legislation at all that should interfere with the freedom of the railroad companies of the country in doing and charging what they pleased without any power on the part of the people to prevent it.

But when they are met by a conference report, agreed by the conferees of the two Houses, and it simply becomes a question whether the Senate will adopt the conference report, knowing that when it does in all probability very soon thereafter the bill will become a law, then the men interested on the other side of this question rally to the support of the transportation companies, and they find all manner of difficulties with the bill which has been brought into the Senate.

Sir, it has just come to the point when you have got to face the music and vote for an interstate-commerce bill or vote it down. That is all there is of it. I have nothing more to say. I have discharged my duty as best I know how. I reported on the part of the Senate conferees the bill that is before you. I am not responsible for what the Senate does with it. I am not going to find fault with anybody in the Senate upon the question, whether we concur in the report or reject it, but I warn Senators that the people of the United States for the last ten years have been struggling to assert the principle that the Government of the United States has the power to regulate transportation from one end of this country to the other.

We are now just at the point whether we will decide it or whether we will set the question afloat again for another Congress that comes in after the 4th of March. I am not going to say that I know if the report is not concurred in we shall get no legislation. I shall not say that, but I am going to say that I in my heart believe that it is very doubtful, to say the least, whether, if the report is defeated, we shall get any legislation

during the present Congress. So when the Senate acts upon the question my duty will have been done so far as I am able to see it.

I confess that there are provisions in this bill which I do not like. I would have preferred the bill that I, as chairman of the select committee, reported to the Senate. I would have preferred the bill the Senate passed during the last session. I went into the conference committee hoping and struggling to get the bill, pure and simple, that we had passed in the Senate during the last session of Congress. But I could not get it. I understand that if a conferee can not get all that he wants, and all that the body he represents asks for, in a case of vital importance, it is his duty to do the best he can under all the circumstances, and agree, if he can afford to do it consistent with his sense of public duty.

That we did, and we have submitted this report. As I said before, it is for the Senate now to discharge its duty and vote for it or vote against it, as it sees proper. If it shall vote the conference report down, I shall hope that we may get something better in the place of it, and if I had anything to do with the next effort, I should do the very best I could to get a bill more in harmony with my own sense of what is right as well as with the expressions made by Senators in the discussions upon this bill.

But I repeat, every Senator must take his own responsibility in making up his mind, and in the light of the uncertainty of getting any legislation and thereby letting it go out to the country that the railroads are still masters of the situation, you must vote as your judgments may dictate.

I have believed from the time I have given any attention to public affairs that it was necessary to bring into force the provision of the Constitution giving Congress the power to regulate commerce among the States. The Senator from New York [MR. EVARTS] attacked the bill and said that it was unconstitutional, because, as I understood him, the Constitution was framed on that subject for the purpose of facilitating commerce, and that this was a bill to hinder or to militate against it.

I undertake to say that the purpose of the bill, at least whatever may be the strained construction which has been placed upon it or which may be placed upon it by the transportation companies of the country, has been to facilitate commerce and to protect the individual rights of the people as against the great railroad corporations. I have no disposition to do the railroads of the country any harm. I have no disposition to interfere with their legitimate business. I have no disposition, God knows, to interfere with the commerce of the country, properly conducted. But I do say that it is the duty of the Congress of the United States to place upon the statute-book some legislation which will look to the regulation of commerce upon the railroads so that they will not treat one man differently under similar conditions and circumstances from another.

It has been said over and over again here that the railroad companies would build up one man and crush another; that their policy has been to destroy one locality or city and build up another. Here we have undertaken to so regulate them as to prevent them from doing those things so far as we could do so.

The Senator from Massachusetts has arrayed a great number of witnesses against this bill from his own city and from other places. While he was making his speech I received a dispatch from a man by the name of Edward Kemble. While I do not now personally remember exactly the individual business in which he is engaged, I do remember that the Senator himself gave me his name before he went to his city to take testimony as one of the men who would be well advised upon the subject, and who would testify before us. Mr. Kemble says, addressing me:

BOSTON, MASS., *January 14, 1887.*

Don't think the action of Chamber of Commerce here can be sustained. I am a member, and an exporter of breadstuffs, and heartily approve your bill.

EDWARD KEMBLE.

Here is a telegram which I received from another citizen of that State who, I believe, was before the committee:

BOSTON, MASS., *January 8, 1887.*

SENATOR CULLOM, *Washington, D. C.:*

The interstate-commerce act ought to become a law because the railroad management of late have built up a class of favored shippers, thus putting a premium on dishonesty.

GEO. H. BEAMAN, 163 *State Street.*

I suppose the Senator from Massachusetts knows both of these gentlemen.

MR. HOAR. May I ask the Senator if he does not see very clearly that both the gentleman who sent in those dispatches sent them in the belief that the bill does not mean what he says it means, but that it means what the House conferees say; that is, the dispatch shows that the sender wants to break up this system of rebate for the foreign commerce which the Senator thinks will still be preserved by the bill?

MR. CULLOM. I do not understand that I have a right to draw any such conclusion. These gentleman have had copies of the bill. There is not a city in the United States where there is a board of trade or a chamber of commerce that has not given almost constant study to the provisions of this bill for the last ten days or more. There is a difference of opinion in reference to what the effect will be upon the commerce of the country.

Mr. President, a word or two more and I shall close. I think the Senator from California [MR. STANFORD] is perfectly consistent with himself in opposing this bill, because he comes before the Senate and frankly and honestly—and I honor him for it—says that he is against it and states one special reason why. He says that from San Francisco to New Orleans he can only charge a rate that would perhaps give him a dollar a ton, while from San Francisco half way to New Orleans at some uncompeting place he can charge two or three times the amount, and, therefore, he does not want the Government of the United States to interfere with that privilege. He is perfectly honest about it. He states the exact facts I have no doubt, and says he does not want to be interfered with. Well, sir, I dislike very much to favor any bill that would interfere with what the Senator from California believes to be an honest right on his part; but I must insist that, while there may be occasionally an instance such as the Senator referred to, it ought not to stand in the way of general legislation needed to protect the great masses of the people against unjust discrimination by the railroads of the country.

The Senator from Alabama [MR. MORGAN] says we had better go slow and remain quiet under the old régime. Well, Mr. President, I remember only a few days ago hearing the Senator from Alabama alleging that the railroads, the common carriers of the country were eating up the people, were destroying the interests of the people. I do not know whether he confined that remark to his own State or extended it to the whole country, but I should have inferred from the language he used against the railroad companies that he would have been in favor of almost any legislation that would in any way restrict them in their reckless disregard of the rights of the people. I can only conclude that the Senator from Alabama would rather that destructive system should go on, as he charged it to exist when he made his speech the other day, without control, than to trust a commission who, he says, are individually liable to corrupt influences, either at the hands of the President or somebody else outside.

Sir, we have got to trust somebody. We must either leave this matter to the discretion and judgment and sense of honor of the officers of the railroad companies, or we must trust the commission and the courts of the country to protect the people against unjust discriminations and extortions on the part of common carriers. Who is it that is most liable to be controlled wrongfully? Is it the President of the United States as against a corporation? Is it an honest commission honestly selected by the President of the United States as against a railroad company? I say there are not those inducements to be placed in the hands of a set of men selected for their integrity, selected for their ability, selected for their capacity to regulate these railroads and enforce the law, that are left in the hands of the officers of the railroad companies themselves.

I take it that there is somebody honest in this country and that the President of the United States, if this bill becomes a law, will select the broadest-gauge men, the men highest in integrity and intelligence as the men to enforce this law as against the corporations and as a go-between, if you please, between the shippers and the railroads of the country. I am willing to trust them. If they are not honest the President has the right to remove them, and if the shipper is unwilling to submit to their judgment, under this bill he has a right to go directly to the courts. I say there is not anything that can be done by these corporations against individuals where the shipper himself has not a right to get into court in some way or other if he is not willing to abide by the decision of the commissioners appointed by the President.

REMARKS OF MR. CRISP OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES, JANUARY 18, 1887.

MR. CRISP. I ask unanimous consent that the reading of the report of the conference committee be dispensed with. It has been printed in the RECORD by order of the Senate, and again printed in the RECORD by order of the House. I have no doubt it is familiar to members and any gentleman desiring to do so can send for a copy in document form, and have it before him as we go on with the consideration of the bill. In the interest merely of economy of time I ask unanimous consent to dispense with the reading of that report.

MR. O'NEILL, of Pennsylvania. The gentleman from Georgia will permit me to say I do not desire to have any time consumed simply for the purpose of consuming time. But I think it best that this report should be read. It will not take more than fifteen minutes to read it.

THE SPEAKER. The gentleman from Georgia asks unanimous consent to dispense with the reading of the report of the conference committee, it having already been printed in the RECORD. Is there objection?

MR. DUNHAM. I do not care to have the bill read, but I think the report ought to be read. The report of the conferees is all that I desire to have read.

MR. CRISP. I do not ask to dispense with reading the explanatory statement of the conferees, but only the formal report of the committee.

MR. DUNHAM. It is the detailed statement of the conferees that I desire to have read.

MR. CRISP. I have not asked to dispense with the reading of that.

THE SPEAKER. In the absence of objection, the reading of the conference report will be dispensed with, and the explanatory statement of the conferees will be read.

The Clerk read as follows:

STATEMENT OF CONFEREES ON THE PART OF THE HOUSE.

The House conferees on the disagreeing votes between the two Houses on the bill of the Senate "to regulate commerce," and the bill of the House "to regulate commerce among the States, and prevent unjust discrimination by common carriers," make the following detailed statements of the changes between the House bill and the substitute herewith appended.

The action of the House being to adopt a single amendment, your committee without attempting to call attention to the precise changes made in each section of the bill, report to the House the substance and effect of the changes made, as follows:

The bill of the House applied only to the transportation of freight, and the bill as adopted embraces the transportation of passengers as well as freight.

The bill of the House was limited to the regulation of such transportation on railroads. The bill as reported provides for the regulation of the transportation of property partly by railroad and partly by water, when both are used under a common control, management or arrangement, for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia.

The bill which we report defines the term "railroad" as used in it, to include all bridges, ferries used or operated with any railroad, which is in addition to the provisions of the House bill.

The second section of the substitute bill adopts substantially the provisions of the House bill against discrimination by special rates, rebates, drawbacks, and other devices, and declares that any one making such discrimination shall be guilty of unjust discrimination, which is hereby prohibited and declared unlawful.

The third section of the substitute embraces substantially the provisions of the bill of the House, in requiring equal facilities and advantages for all shippers, without exception, and as a provision requiring equal facilities for the interchange of traffic with all other railroads for the carriage of property and passengers, and forbids any discrimination by one railroad in the facilities furnished against any other railroad. It contains a clause declaring that this act shall not be construed as requiring such common carrier to give the use of its tracks or terminal facilities to any common carrier engaged in like business.

The fourth section adopts substantially the provisions of the House bill on the long and short haul, with the following proviso: That upon application to the commission appointed under the provisions of this act such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for a longer than for a shorter distance for the transportation of passengers and property, and that the commission may, from time to time, prescribe the extent to which such common carrier may be relieved from the operation of this section.

The fifth section of the substitute bill is a copy of the clause in the House bill prohibiting pooling, with an amendment striking out the words of the House bill "by dividing," and inserting in lieu thereof the words "or to divide," and with the addition of the words in line 3, after the word "combination," "with any other common carrier or carriers."

The sixth section is a substitute for the provisions of the House and Senate bills in relation to the publication of schedules showing the rates, fares and charges for the transportation of passengers and property. Instead of requiring the rates to be posted up, as was provided in the House bill, it requires that, after ninety days from the passage of the act, every common carrier subject to its provisions shall have printed and keep for public inspection schedules showing such rates, fares and charges, and, in addition to requiring the railroads to give publicity at all of the depots on their several lines, it gives authority to the commission, where it is proper and necessary to require them to give publicity to their rates to other places beyond the lines of their several railroads.

It also provides that the rates, fares and charges shall not be raised except after ten days of public notice, but that they may be reduced without previous public notice; the notice, however, shall be simultaneous with the reduction itself, and it requires that all common carriers subject to the provisions of this act shall file with the commission provided for in the bill, copies of the schedules which have been established, and shall promptly notify said commission of all changes made in the same; and that they shall file with the commission copies of all contracts, arrangements or agreements with other common carriers in relation to traffic affected by the provisions of this bill; and in cases where passengers and freights pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges of such continuous lines or routes, copies of such joint tariffs shall also be filed with the commission, and made public, if so directed by the commission.

The section also provides that where a common carrier subject to its provisions shall neglect or refuse to file or publish its schedules of tariff or rates and fares, or any part of the same, such common carrier shall, in addition to the penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States, in any judicial district wherein the principal office of the common carrier is situated, or wherein such offense may be committed, requiring the compliance with the provisions of the act.

The seventh section of the substitute bill contains substantially the provisions of the first part of the second section of the House bill, in relation to the continuous carriage of property and persons from the place of shipment to the place of destination.

The eighth section of the substitute bill contains the substance of the seventh section of the House bill, in regard to damages and counsel's fees, but expressed in somewhat different language.

The ninth section of the substitute bill is a new section, which provides that persons claiming to have been damaged by the action of common carriers may proceed for recovery of their damages either in the courts of the United States or before the commission herein provided for, as they may elect, but not before both tribunals. This section, which gives jurisdiction to courts of the United States, does not give jurisdiction in civil suits to the State courts as was provided for in the House bill.

This section of the substitute bill also provides that the courts shall have power to

compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit, to attend, appear and testify in such case; and may compel the production of the books and papers of such corporation or company party to any such suit; and it provides further that the claim that any such testimony or evidence may tend to criminate the person giving such evidence, shall not excuse such witness from testifying; but that such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

The tenth section of the substitute bill makes it a penal offense to violate any of the provisions of this act, and is substantially the eighth section of the House bill, except that it puts the maximum of the fine which may be imposed at the sum of \$5,000 instead of \$2,000, as was provided for by the House bill.

The eleventh and subsequent sections to the twenty-first, inclusive of the substitute bill, contain the substance of the Senate's bill providing for a commission, except as modified by the provisions of the substitute bill herein recited.

It provides for a commission to consist of five persons whose term of office shall be for six years, except for the first appointments, which are to be for two, three, four, five and six years. The members of this commission are to be appointed by the President, by and with the advice of the Senate. Their principal office shall be in Washington, but they may hold sessions at other places than Washington, and a single member of the commission may take testimony anywhere, as may be directed by the commission.

These commissioners have salaries of \$7,500 each. The commission has the power to appoint a secretary with an annual salary of \$3,500, and has authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

The nineteenth section of the Senate's bill, providing for a reference of the question of pooling to the commission, is not embraced in this substitute.

Section 22 of the substitute bill, among other things, provides that nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but that the provisions of this act are in addition to such remedies, with a proviso that no pending litigation shall in any way be affected by this act.

Section 24 of the substitute bill provides that the act shall go into effect sixty days after its passage, as in the opinion of your committee it was deemed best to give the railroads sufficient time to prepare their schedules and to modify their management in accordance with the provisions of this bill. The appointment of the commission, however, is to be made at once, as it has to be organized, and as said schedules of rates and charges have to be filed with said commission.

J. H. REAGAN.
CHARLES F. CRISP.
A. J. WEAVER.

Managers on the part of the House.

MR. CRISP. Mr. Speaker, I propose now to explain somewhat the provisions of this bill, and the action of the managers who represented the House in the conference. I am not informed as to the disposition of the House with regard to debating this report. If it were possible to have now any understanding looking to the fixing of such early time for a vote on this question as may be consistent with a proper discussion of so important a measure, I should be very glad indeed.

MR. WEAVER, of Iowa. I think it best the debate should be permitted to run on awhile, before attempting at all to limit it.

MR. DUNHAM. After the debate has proceeded for a time, we can then better see what limit should be fixed. Two hours hence we can tell better than we can now when we desire the debate to stop.

MR. O'NEILL, of Pennsylvania. The Senate occupied nearly two weeks in the discussion of this report.

MR. CRISP. Mr. Speaker, in view of the suggestions of gentlemen, I shall not at this time undertake to secure any limitation of the debate on this question.

For many years attention has been directed to the practices of common carriers, transporters of commerce from State to State—practices

which have been generally understood and believed to be unjust to the public. Year after year the agitation of the question of regulating such commerce has been brought to the attention of the Representatives of the people. At the last session of this Congress, this House, by a very large majority, passed a bill known as "the Reagan bill," the purpose and intent of which was to protect the people from unjust charges by common carriers engaged in interstate commerce.

At the last session also, the Senate of the United States passed a bill known as "the Cullom bill," having for its object the regulation of the carriage of commerce between the States. These bills were dissimilar; they brought about a disagreement between the two Houses upon a question, which, as the votes of the two Houses clearly indicated, each House was anxious to adjust satisfactorily. In that state of the case a conference committee, consisting of three members of each House, was appointed; and those conferees, before the assembling of the present session, met in the Capitol and made an earnest effort to agree upon a plan which would afford some relief to the people of the United States. I need not say that, representing in a controversy of this kind views so different as those which had been expressed by the two Houses, the conferees on the one part and on the other had to yield something of their convictions as to what ought to be done. The result of those labors is presented in the pending report.

I feel, as one of the conferees on the part of the House, the only one of them now present, that an explanation should be made of this bill. I feel you ought to be told as to what we understand to be the meaning of any part of this bill any gentleman wants to inquire about, and I feel you ought to be informed that the bill as presented is the result of a compromise made between individuals or Representatives in Congress who earnestly desire to afford some relief to the people of the United States.

I shall not, Mr. Speaker, at this late day, in the discussion of this great question, undertake to present to this House all the reasons that exist why legislation should be had on this subject. I take it for granted that every man in the House who regards railroading as a business in which the public has an interest, understands and concedes that some regulation, some provision, some law is necessary to protect the people against the practices on the part of railroads, which have so unjustly burdened the great body of shippers, and occasioned a demand for legislation from every State in the Union.

In the arguments made by the representatives of these corporations as a reason why legislation should not be had, in my judgment, Mr. Speaker, the error lies in the fact that they fail to recognize the character of the corporation which they represent. They come before the committees of the House, they go before the country making an argument in vindication of their practices, which might be, in many cases, forcible if they were talking about a private business, if they were talking about a business in which the public had not an interest, if they were talking about a business which could exist without the consent of the Government. If we will bring our minds to a recognition of the fact—because there we must at last come—that a railroad company is a corporation created by the public, for the benefit of the public, that while the corporators and owners of the franchise have a right to charge

reasonable tolls, they take that right burdened with obligations to the public which are of paramount importance and which can not be disregarded.

A railroad can not be built in any State in this Union except by the exercise, on the part of such State, of the right of eminent domain. The State can exercise that right in no case except for the public good—for the public use. No State and no power can take from an individual property which he owns and give it to another. It can be taken by the State for only one purpose—for public use—and then only on just compensation.

These companies are chartered by the State, or by the United States. The power that grants a charter grants it, although it may not be so nominated in the charter, for the public good.

Therefore it is, Mr. Speaker, the people have rights in regard to these corporations and great transportation agencies which they would not have if it were a business conducted by a private individual.

The error, therefore, I say, in the arguments presented to sustain the present practices arises from a misconception of the character of these corporations. And I mention that now so the House and each member may bear in mind in what we propose to do we are dealing with a corporation or corporations in which the public interest is paramount. And while we do not seek, and should not seek, to deprive investors of reasonable returns for their investments, if the public interest demands it private interest must give way.

Now, Mr. Speaker, having called the attention of the House to that fundamental principle, which I believe is not now disputed, I propose to invite attention to the provisions of the bill, or some of them, which we suggest for consideration. In many of the provisions of this bill, I understand, we all agree. Those provisions of this bill, which seek to enforce equality between the shippers, I understand nobody objects to. The bill provides that no preference shall be given to one shipper over another, and that no drawback, or rebate, or device shall be authorized or permitted which allows discrimination in favor of one shipper against another; that no practice shall be tolerated which permits discrimination for or against a particular locality, that no practice shall be allowed which permits a railroad company to discriminate for or against a connecting railroad or other railroad company which may receive or want to receive freight from the railroad company so carrying. The act also provides that all rates charged by the common carrier engaged in interstate commerce shall be reasonable and just.

Those provisions, Mr. Speaker, I understand meet the approbation of all. Those provisions, like some other provisions in this bill, to which I shall refer, are the provisions, as I understand it to-day, of the common law of the land where we live. I understand that each one of these provisions is maintained by the common law; and therefore there should be and can be no reason, I submit, why any member should object to this portion of the bill.

The next point to which I shall refer, and which has excited some controversy, one perhaps which has received more attention in the public discussions and in the public press on this measure than any other section, is the fourth, that referring to what is commonly called the long

and short haul. I will ask the Clerk to read the fourth section of the bill, as amended.

The Clerk read as follows:

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance; *Provided, however,* That upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

MR. CRISP. That section, Mr. Speaker, as I have said, has given rise to a great deal of controversy, and I feel it incumbent upon me to present to the House in the utmost candor my view of its meaning. Of course, I do not presume to say that my view of it is the absolutely correct one, but I can state what I believe it to mean. I can state what I intended it to mean when I gave my assent to the placing of it in this bill.

The great object the committee had in view was to say that by law a transportation company should not charge unreasonable rates, and should not discriminate against individuals or places. We believe, or I believe, that the principle upon which the rates should be fixed in the transportation business is the cost to the company of transporting the goods, the cost of their plant, the value of their line, the cost of terminal facilities, etc., with allowance for a reasonable profit on the investment.

I do not believe, sir, that extraneous circumstances ought to affect the question of charges. I do not believe, Mr. Speaker, that it is any business of the transportation company where goods come from that are to be shipped over their line, any more than I believe it is their business to know where the goods go after passing from their line. I believe that their legitimate business is the transportation, for reasonable rates, of such freights as may be given to them by any individual or by other corporations for transportation.

Believing such to be the case, my understanding of this section is that the purpose is to bring about reasonable rates without discrimination; and under this section the amount charged by a railroad engaged in interstate commerce for transporting freight over its entire line is the maximum rate that may be charged for transporting freight over a part of it only, the freight and the circumstances being substantially similar. I do not mean to say, nor does the bill say, that it would be reasonable and just to charge as much for the short as for the long haul, but it does say under the general rule that more shall not be charged. I do not understand that the word "line" as used in that section means anything different from road as defined in the bill:

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease.

MR. BUTTERWORTH. I do not want to anticipate the argument of

my friend, but I trust that he will at this point explain what is meant by the words "substantially similar circumstances and conditions," and give an illustration of what he understands by similar conditions and circumstances and those which are dissimilar, and which will authorize a change in rates. Of course he knows that we can learn more readily by illustration than by precept.

MR. CRISP. The gentleman has not given me a very easy task. The provision we make is that where the circumstances are substantially similar the shorter haul shall not be charged more than the greater. I can not undertake in a debate like this to determine for the gentleman exactly what would constitute "substantially similar circumstances." That would be a matter into which I could not now enter; and I submit it is hardly fair to ask me to define "substantially similar circumstances" as used in the bill.

MR. LONG. But is it not necessarily what a judge would have to do in instructing a jury?

MR. BUTTERWORTH. That is the point; for if my friend was a commissioner he would have to define it.

MR. CRISP. If complaint is made to the commission of the violation of the rule prescribed in the fourth section of this bill, the commission, after hearing both sides, would determine in the particular case made whether or not the complaint was well founded. Necessarily in deciding that question they would determine whether or not the circumstances were substantially similar in the case of the long haul and in the case of the short haul presented in the complaint. That is the object and purpose of the commission in that regard. If the individual did not go to the commission, but went to the courts, then, Mr. Speaker, the courts, the judge, and the jury would determine that question. I am not prepared, sir, to say, in answer to the suggestion of my friend from Massachusetts, Governor Long, that the court would tell the jury what "substantially similar circumstances" meant.

MR. LONG. No; but the judge would have to tell the jury what the legal effect of the words is.

MR. CRISP. I think the judge would say to the jury, after hearing all the evidence, that if they believed more had been charged for the short than for the long haul of like kind of property under substantially similar circumstances and conditions, then they should find for the complainants, leaving the jury to determine in each case whether the property was of like kind and whether the circumstances and conditions were substantially similar.

MR. SCOTT. There is a line of railroad known as the New York Central Railroad, extending from Buffalo to the city of New York, entirely within the jurisdiction of the State of New York, and all rates made from Buffalo to the city of New York would not come under this bill. This bill cannot the rates of that railroad. Then there is what is known as the great chain of lakes, extending from Buffalo to Chicago, entirely open to the competition of every vessel and every vessel-owner, competing for the great trade of the Northwest. When that trade is brought from Duluth and from Chicago, and delivered at the port of Buffalo, it immediately becomes State commerce, and is not then within the jurisdiction of your bill.

There is another line of railroad inland extending from the city of Chicago, and known as the Pennsylvania railroad system, being the Pennsylvania railroad from the city of Philadelphia to the city of Pittsburgh, and there connecting with a line controlled by and known as the Pittsburgh, Fort Wayne and Chicago Railroad, extending to the city of Chicago. And all the trans-continental commerce consequently carried by that system of road has to be carried inland. How can you, therefore, possibly, under the provisions of your bill, treat equitably and fairly these two great systems of transcontinental roads when the competitive traffic is delivered by lake at Buffalo coming in under the jurisdiction of New York State, and the inland line running from Chicago to the city of New York, which comes in under your bill becomes subject to the prohibitory provisions that they shall not do so and so?

MR. CRISP. The Congress of the United States have no authority under the Constitution to regulate the transportation of commerce wholly within a State. The States of the American Union under the Constitution have no right to regulate the transportation of commerce between the States. The line is clearly marked.

The question of my friend from Pennsylvania [MR. SCOTT] involves the idea that because we can not regulate the transportation of commerce within the State of New York we shall not therefore regulate the transportation of commerce between the States. See, Mr. Speaker, the position in which that would leave, and I might say has left, the American people for many years. Until quite recently, sir, there were many believers in the policy of railway regulation who insisted that the true method was to leave to each State the regulation of transportation through and over its territory, and you found men who recognized the necessity for legislation, but felt that it was a dangerous step for Congress to take and insisted that the States should legislate for the regulation of each line within its borders.

The Supreme Court of the United States before whose decisions we all must bow, have decided that commerce, interstate commerce, commerce passing from one State into or through another, could not be regulated, nor could the carriage of it be regulated by the State law. If, therefore, we are to wait before we discharge our duty under the Constitution to the people until the State of New York, or the State of Massachusetts, or any other State discharges its duty, in the mean time I ask you who is to protect the great body of the people from the aggression of these vast monopolies? All that we can do in this case or in any other is to discharge our duty under the law; to take no step that will impair the right of the States, but to leave undone nothing that we can constitutionally do that will aid the people to just and reasonable rates of transportation of person or property between the States.

If the evil suggested by the gentleman from Pennsylvania exists, then when we discharge our duty I think we can confidently rely upon the people of that great State to discharge theirs.

MR. NELSON. I desire to suggest to the gentleman from Georgia this: Whether or no the question propounded by the gentleman from Pennsylvania was not rather in the nature of a suggestion how it was possible to evade the provisions of this bill, than anything else?

MR. CRISP. I was answering the suggestion of my friend from

Pennsylvania because I understood him to mean by the case that he cited, that because perhaps the railroad wholly within the State of New York could not be required by this act to do or leave undone anything, its passage would be unjust to other railroads competing for the same business who would be controlled by our legislation. Therefore, it is that I am making the suggestion I do.

MR. BUTTERWORTH. Does the fact that there is water competition along a part of the line and not along the whole line change the condition within the terms of this act? In other words, suppose from A to C there is water competition, and in order to obtain the freight, a certain rate, about that which should be charged for transportation by water, were charged suppose from A to B, B being between A and C, but nearer C, there being no water competition between B and C—would you say the circumstances and conditions touching the shipments to the two points B and C were substantially the same, and hence that the carrier would not be authorized to charge an increased rate to C?

MR. BRUMM. Is not that rather a question of construction?

MR. CRISP. I will say, because I do not wish to conceal any opinion I entertain on any provision of the bill, that in my judgment the fact that there was competition there does not affect the question.

MR. BUTTERWORTH. Then my friend will agree that the long haul is practically abolished as between A and C?

MR. ANDERSON, of Kansas. Oh, no.

MR. CRISP.—MR. Speaker, while I agree with the gentleman from Ohio [MR. BUTTERWORTH] as to the meaning of that provision, I can not agree in his suggestion that the long haul is abolished. Why, sir, within the margin provided by the bill, see the advantage that the long haul has. It must be remembered that there is no attempt in this bill to require any transportation company to make a pro rata or so much per mile charge.

So far as the restriction in the fourth section of the bill is concerned, they may charge as much for the short as for the long haul. Now let me answer the gentleman's question upon the idea that these railroads are common carriers established for the benefit of the public. Here is a line of railroad from New York to New Orleans, made up of connecting lines. At New Orleans there is a water transportation, as there is at New York. That line of railroads will haul freight from New York to New Orleans for about 76 cents a hundred, while to Atlanta, which is about half way or a little more, the charge is \$1 a hundred. Goods that go from New York to New Orleans by rail go through Atlanta and nearly as far again as they went in reaching Atlanta, and when they get to New Orleans they pay 76 cents a hundred; whereas, if they had stopped at Atlanta and saved nearly half the haul they would have had to pay \$1 a hundred.

MR. BUTTERWORTH. Now, if the gentleman will indulge me right there, I will not interrupt him again. He will concede that the charge to New Orleans is based upon the competition with water—that, because of that competition, the railroad companies can not charge and receive a higher rate. Now, since they must charge that low rate which they do charge to New Orleans in order to secure the business, I ask the gentleman to explain to the House how it will benefit Atlanta to cut off that

long-haul rate from New York to New Orleans? He will bear in mind that it is impossible for them to get the freight for New Orleans at all unless they charge such a rate as will enable them to compete with water transportation. If that business is lost to the railroad companies because they are not allowed to charge the lower rate to New Orleans for the reason that they can not reduce the rate to Atlanta, will the gentleman explain how Atlanta will be benefited?

MR. ANDERSON, of Kansas. But your assumptions are not correct.

MR. BUTTERWORTH. They are correct.

MR. CRISP. Atlanta, I take it for granted, is entitled in the case suggested to reasonable rates. What is or what is not a reasonable rate is a question of fact, which must be settled by what?

MR. BUTTERWORTH. By all the circumstances.

MR. CRISP. By the question of competition, or by the question of cost?

MR. BUTTERWORTH. Competition is one of the circumstances, of course. When a road is built the probability of competition is one of the circumstances to be considered, because it will get no freight unless it can carry as cheaply as its competitors.

MR. CRISP. I suggest to my friend that right there, in my humble judgment, is one great error which is made by the transportation companies. They lose sight of the business for which they were organized. The gentleman says that if the railroads do not haul at such a price from New York to New Orleans they can not get any business. They ought not to have any business unless they can make a reasonable profit upon it, and if the reduced rate of 76 cents between New York and New Orleans pays a reasonable profit, what kind of a profit, I ask you, does the dollar rate from Atlanta to New York pay, the distance being only about half as great?

MR. ANDERSON, of Kansas. Why, it amounts to larceny! [Laughter.]

MR. CRISP. But if they make no money by doing business at the lower rate between New York and New Orleans, then there is a double burden upon the intermediate points along the line, because they are taxed to make up what has been lost upon the through transportation. So at last, my friend from Ohio, it is a question of the reasonableness of the rate.

MR. BUTTERWORTH. Certainly, all things considered.

MR. CRISP. Under the fourth section of this bill discrimination can be made to this extent, that the railroad company may charge as much for the short haul as for the long haul. Let the question be addressed to any man of ordinary understanding like myself: Is it reasonable and just that a corporation which owes its existence to the public, and is bound to exercise its franchises for the benefit of the public, shall take an article of freight in the city of New York, and if it delivers that article at a distance of 500 miles from New York shall receive a dollar for carrying it, but if it carries it 500 miles farther shall receive 75 cents? What must be the answer? Does that strike any gentleman as a reasonable and fair business proposition.

MR. BUTTERWORTH. My friend knows very well that to get the freight at all to a given point the railroads must compete with their competitors. That is true, is it not?

MR. CRISP. Undoubtedly.

MR. BUTTERWORTH. Now, if competing rates do not pay any profit, but barely the cost of the transportation, must the railroads turn that business away? If not, if they are allowed to carry it, it certainly helps to pay expenses, and thereby, to some extent, takes the burden off the short haul. Just how the public is injured by that is what I ask the gentleman to explain.

Here is a little town, if you please, twenty miles from this city where the people have been accustomed to pay 6 cents a bushel for hauling all their coal. A railroad company builds a line passing that town and extending to some point beyond, where there is water competition. The railroad company says to the people at this intermediate point, "What has it been your custom to pay for hauling your coal?" The answer is "6 cents a bushel." The company says, "We will haul it for 3 cents a bushel; but to the point beyond, at which there is competition, we must haul it for 2 cents a bushel, because our competitor will haul it for that price." Now, does it injure the people who previously have paid 6 cents a bushel to get their coal hauled at 3 cents? If it does, how does it injure them?

MR. CRISP. That, Mr. Speaker, is a plausible statement. It is however, based upon the inquiry, which I think an erroneous test, "What is the work worth to the shipper?" I maintain the question should be, "What does it cost the transporter?" That is the difference between the proposition made by the gentlemen here and that insisted upon by this committee. You ask, "what are certain services worth to the shippers?" What is it worth to the man halting along the highway to meet a conveyance which will carry him out of the storm and darkness to a place of shelter? If you ask what it is worth to him, it may be worth all that he has. But is that the reasonable rule to apply in fixing the compensation of a corporation established for the public good and not solely for the private benefit of the corporators who have it in charge?

MR. BUTTERWORTH. That is not the case I put by any means.

MR. CRISP. I understood the case put by the gentleman to be that of a railroad company, who say to the people in a certain locality, "You have been paying 6 cents a bushel for hauling, will you not agree to give us 3?" Does not that question look to what it is worth to the people who receive the service, and not to the cost to the transporter?

MR. BUTTERWORTH. No; for the company that builds the road takes into consideration when building it what competition there will be, what the local traffic will be, what the through traffic will be—it takes into consideration all the circumstances which go to fix the price. And I say, instead of the man at the intermediate point being injured, he saves 3 cents a bushel; and ultimately, according to the experience we have had in this country, he may save still more. He is not injured by the reason of the fact that the company runs their cars ten miles beyond, to a point, where, in order to compete, they must take a lower charge.

MR. SCOTT. The gentlemen from Georgia [MR. CRISP] before he resumes will allow me to make one suggestion. He referred in the case he put to the rate between New York and Atlanta as compared with the rate between New York and New Orleans. He said that the railroad companies were charging 75 cents a hundred from New Orleans to New York, and a dollar a hundred to Atlanta, which was not half the distance.

MR. CRISP. A little more than half.

MR. SCOTT. A little more than half. Now the gentleman must remember that the competitor with the railroad from New Orleans to New York is the Atlantic Ocean. Steamships plying between New York and New Orleans fix, to a certain extent, the rates between those two cities. By the competition of the railroads from New Orleans to New York, these ocean rates are kept down. Your bill proposes to drive these railroads out of that competitive business; and such a policy must result in placing the entire control of the business between New Orleans and New York in the hands of the steamships, while the only satisfaction the people of Atlanta get is that possibly the people of New Orleans are compelled to pay eventually a dollar a hundred for transportation from New Orleans to New York, whereas if they were allowed the competition of the railroads that business might be done for 75 cents a hundred. "Misery loves company."

MR. CRISP. Mr. Speaker, I confess I can not see, as suggested by my friend from Pennsylvania [MR. SCOTT] and my friend from Ohio [MR. BUTTERWORTH], that the effect of this proposition will be to increase the through rates unless the present through-rate system is based upon a rule which requires the local shippers to sustain the loss incurred on the through rates. If the charge from New York to New Orleans of 76 cents pays a small profit to the railroad company, I ask again, what kind of a profit must be paid for a haul which is half the distance, when the charge is 33½ per cent. more? We do not seek, as I was going on to say, to establish any pro rata arrangement of so much a mile. We agree by this bill that the companies may charge, if it is reasonable to do so, as much for the short haul as for the long haul, and no more.

MR. ZACH. TAYLOR. Is not the proposition of the bill designed to meet cases of this kind: Between Covington and Memphis, a distance of 37 miles, the charge for transportation of cotton is \$1.15 a bale, but from Memphis to New York the charge is only 90 cents, and it passes over the same line?

MR. CRISP. Mr. Speaker, if it were not going over a subject already exhausted, I could occupy an hour in bringing to the attention of the House actual cases which have arisen in the transaction of business by interstate carriers which would absolutely shock the sense of justice of any man who feels that the public has a right to demand absolute equality in transportation rates.

MR. BUTTERWORTH. But do not the other sections of the bill correct that, leaving no necessity for an arbitrary law fixing a rate without reference to circumstances?

MR. CRISP. If my friend will pardon me, I must go on. I will say to him, however, that the other sections of the bill have a tendency to do that, but in view of the fact that some court, some jury, somebody charged with the execution of this law might think it the intention or design that more should be charged for the shorter than the longer haul, we, by a provision inserted in the bill, give the decision of the legislative branch of the Government, that in no case, except it be a special one, can such a rate be reasonable or just. That is the purpose of the provision referred to.

MR. O'NEILL, of Pennsylvania. I do not wish to interrupt the gen-

tleman; but in reference to this question, whether these charges for freight pay or do not pay the railroad companies for hauling, I want to ask him the simple question, whether the people of this country are complaining that within the last ten or fifteen years freights have been reduced from $2\frac{1}{2}$ cents per ton per mile to less than 1 cent—to seven-eighths of 1 cent?

MR. CRISP. My good friend from Pennsylvania will pardon me for not replying fully, as I have already occupied so much time. I will say, however, that this is not the first time I have heard the claim set up that the railroad companies are entitled to great credit for having during the last twenty years reduced their rates.

We are told by gentlemen representing the railroads that this reduction of rates is a mere matter of grace to the people, who should rise up in thankfulness therefor; and figures are presented to show how much greater the incomes of the roads would have been if they had maintained the rates of twenty years ago. To be truly grateful we must believe that all the advances and progress made in machinery and cars used for the transportation of freight are to be used for the benefit of the railroads and not for the public. Such a proposition denies to the public the saving derived from the use of the discoveries in steam appliances. It denies to the public the advantage of the reduction in the price of steel. It denies to the public the benefit of the reduction in the price of everything that is necessary to sustain life. It denies to the public and claims for the railroads all the benefits arising from a general reduction in the value of all property and is entirely indefensible.

I do not wish to be understood as underrating these corporations as a means to advance civilization and promote the general welfare; but I do mean to enter a protest against the claim that under any sort of rule they would have a right to maintain charges of twenty years ago, when everything else has diminished in value, and to mildly suggest that perhaps these have not been altogether so generous in reductions as their advocates would have us believe. Has the reduction of local rates on any line of railroad in the United States been as great during the past twenty years as the reduction in the price of clothing, as the reduction in the price of sugar, as the reduction in the price of shoes, as the reduction in the price of cotton, as the reduction in the price of almost every article which humanity uses? I grant you at the great competing centers reductions have been made; but I submit that an inspection of the tariff of corporations will show that there has been, no commensurate reduction at intermediate points.

For what purpose do the people of Pennsylvania grant to a railroad the right to build on the territory of the State? What is the object of the grant? Is it because somebody not living in Pennsylvania may be benefited by the railroad? Is not the paramount object the benefit of the people who own the soil? Is not that the primary object? Are those people living along the line of this great road — those people dependent on that means of transportation — are they to be charged with burdensome rates in order that the railroad may transport or obtain freight at a point some distance from it?

I say the true policy of a railroad is to build up shippers along its line. At last on them it must depend for its life. The contrary policy

must result in breaking down those upon whom the road must depend for support. It depreciates the value of property along the line. It diminishes population and defeats, in every way, the object and purpose of the public in authorizing the construction of the road.

MR. MCKINLEY. I would be glad if the gentleman from Georgia would give the House an example which would realize an exception to relieve the carrier from the operation of this act — if he can give us an example in practical business which would justify the commission in making the exception that is provided for in the last clause of section four.

MR. CRISP. Mr. Speaker, I should not like to undertake to do that, but I will say very frankly, speaking my own views, the other House conferees not being present can not speak for themselves, nor can I speak for them. I was of the opinion the general rule ought to be that in no case should a greater charge be made for a shorter distance than was made for the longer one when the shorter is included in the longer. That is my own opinion about it, but in deference to the sentiment, which existed in some breasts that there might be a hardship in an iron-bound rule, believing as I do the commission organized under this act would be slow to relax the general rule, believing that in nearly every case, if not every one, it would be found the enforcement of the rule would work no hardship, I agreed to this provision. I had another reason for agreeing to it, one that always has weight with the practical legislator. I had to do it to get an agreement between the conferees of the two Houses.

MR. MCKINLEY. What particular case?

MR. CRISP. None were cited. I understand it to be like this: Here is a universal rule which we propose to establish. There may possibly be a case, though I confess I can not see it, when the enforcement of this rule would work a hardship to a transportation company, and out of abundance of caution, to do no injustice, whenever the complainant can establish that in a specific case the operation of the general rule would be unjust in that particular case, the commission may relieve him from the operation of the rule.

MR. HEPBURN. Does the word "cases," in the fourteenth line of the fourth section, in your judgment, refer to shipments or to roads?

I refer to the use of the word in connection with the proviso:

Provided, however, That upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property.

MR. CRISP. In my judgment it applies to shipments.

MR. HEPBURN. If I believed that I would not vote for your bill.

MR. CRISP. I should be sorry to lose the support of my friend from Iowa. I do not want to be misunderstood in the answer I have given. I think that it applies to shipments in this sense, that all like cases on that railroad should be operated under the same rule.

MR. HEPBURN. Would it divert the gentleman from his argument to permit me to give an illustration of the point I mean, and then ask his opinion in connection with it?

MR. CRISP. I would be glad if the gentleman would wait a mo-

ment, as I prefer to get through as soon as possible with my remarks, and think I may perhaps answer the point to which he refers in the course of the discussion.

There are only one or two other points, Mr. Speaker, to which I wish to call the attention of the House. That exception, or authority to suspend the rules, was granted by the committee and put in upon the idea that there might be conceivable cases where injury or injustice would result, and hence we would give power to the commission to relieve them.

The next section that has excited comment is that which prohibits the pooling of rates. It takes it for granted that every member present knows what is meant by the words "pooling rates." The railroad companies, or their representatives, or rather the leading representative of the system of pooling, object to that term as offensive, and say that a very great amount of misconception exists in the public mind on the subject of pooling, largely resulting from the unfortunate use of that term; and suggests in lieu of it that it is a system for the "maintenance of rates and traffic unity." That is what he calls the system which we seek to prohibit in this bill.

Pooling, Mr. Speaker, is a device—and of course I do not use that word in any offensive sense—on the part of independent monopolies to build up and maintain one great monopoly. It is a device to defeat competition; and when they talk of the "maintenance of rates and traffic unity," they mean that those companies that were built by the public to give the people the benefit of competition, shall be united with each other by this new device, so as to make them practically, for rate purposes, one line.

We have heard much of the importance to the general public of stability of rates, and I agree that it is important. We hear much said in defense of this system, and the allegation is made that it is merely a system to preserve and maintain regularity of rates and prevent railroad wars. A significant fact in this connection is that in no case on record, I undertake to say, can you find where two railroad companies have pooled their local rates. Wherever the railroad is omnipotent, so far as the shipments are concerned, wherever they can put upon the shipper any rate suggested by their cupidity or avarice, or suggested, if you please, by the other rule so lauded by these gentlemen as to what the freight will bear, in every such case you find each road standing by itself and making no pool.

Therefore I aver the object of pooling is to destroy competition. You may present it in any light you choose, call it by any name you please, that is its object, and it never was discovered until the competing lines, which had been built for the public interest, were requiring these corporations to transport for the public at such reduced rates that they were not making what they thought they ought to make. I maintain, sir, that the railroad business, or the business of transportation, is no exception in one respect from any other business, and that is that it is to the interest of the public to have competition.

While it is true that under the railway system as it exists to-day it seems that railroads will not quietly submit to competition, yet I suggest that is the fault of the railway companies and not of the public.

Here is a line of railway extending, if you please, from Atlanta, in the State of Georgia, to Macon, in the same State. If investors conceive the idea that the business of that line is sufficient to justify another, they go to the Legislature, which represents the people, and ask the right to build the line, they ask that the State exercise and grant to them the right of eminent domain, in order that they may acquire a right of way. What is the inducement to the State to grant the charter; is it not that the people may have the benefit of competition and thus perhaps get better and cheaper rates? Unquestionably this is so.

The Legislature that grants to the corporation a charter that enables it to transact its business, represents the public, and grants the franchise only for the public good, to-wit, that the people between the two points shall have the benefit of competition. That is true everywhere where there are competitive lines.

What is the effect of pooling? It is to defeat the object of the Legislature. It is to defeat the interest of the public. It is to place those lines in the same condition that they would be if one great railway magnate or great railway corporation should become the owner of the line. Gentlemen who sustain this practice say to us that if you prohibit pooling, the result will be a railroad war, that the irresponsible bankrupt concern will reduce its rates and undercut, that the other will undercut, and one will go under, and it will be a case of the survival of the fittest. If that lamentable state of affairs should exist, it will be the fault of the railway companies themselves, who will not brook that legitimate competition that every other enterprise has to bear; but even if this dire result should occur; then, Mr. Speaker, we would be in no worse condition than we are to-day, where the effect of the pool is practically to make one line.

MR. HOPKINS. I ask the gentlemen if the clause in section 4 will not have a tendency to prohibit these rate wars? If they put down the price of freight at a terminal point they will be compelled to put it down all along the line, and no road can afford to engage in such a war with section 4 in the bill.

MR. CRISP. There may perhaps be some tendency of that sort; but to me it occurred that there could be no justification looking to the public interest for a practice of this sort. Why, Mr. Speaker, it is not an uncommon thing in a State for the Legislature to provide that such and such a railroad company shall not own another or operate another. In my judgment one of the wisest things a State Legislature could do in granting a charter would be to provide that a company should not engage in any other business but the business of transportation, and that it should not acquire the ownership of any other line. Why not? There is nothing in this bill, you understand, that prevents traffic arrangements by which continuous carriages are made. That is not prohibited. The prohibition is against the pooling of freights or the receipts of competitive railroads. You all know what kind of pools have existed and do exist in this country to-day.

Under that system there is no inducement to the railroad company to furnish good transportation; there is no incentive to the enterprise and to the energy so typical of the American character. They go into the pool, and, according to the agreement, so you receive, whether you carry a pound of freight or a million pounds of freight. The amount of money

that comes in on all the roads is put into a pool. A commissioner is appointed at a great salary, paid by these railroads, and it is his duty to divide the receipts according to the agreement, one receiving five, another ten, another twenty, or whatever may be the per cent. agreed upon.

There are other kinds of pools, pools which agree that a certain railroad company not in the pool shall not have a right to ship its freight over their line. When I say it shall not have the right I mean the rate is prohibitory. They put such a rate on the competing line at another point that the shipper can not ship over it, but must take one of the lines within the pool. They have an arrangement by which the water transportation of the country can not be used and at the same time give the people the benefit of the railway.

The Central Pacific Railroad Company, the evidence shows, has arrangements of this sort, that they will make special rates to a shipper over their road provided he will agree he will give them all his freight and will not ship a dollar's worth by water. If he will do that he will have a special rate. If he will exercise the freedom and independence and manhood that are supposed to belong to our people, then he has to pay to this creature of the public an increased price for his transportation.

They have had pools by which a railway in the city of Chicago agreed to pay to a single live-stock firm in that city \$15 for every car-load they carried for anybody; and in consideration of that the firm was to even up according to an understanding they had. He was to even up; that is, the firm was to give each railroad the amount of transportation that according to the bargain it was to have, not according to the public demand, not according to the choice of the shipper, but what they in their magnanimity or wisdom thought was satisfactory or sufficient between themselves, and they directed where your cattle would go and where yours would go, and you would be bound to ship them in that way.

That is another kind of pool they have had in this country. Now, Mr. Speaker, I propose to break up that system.

MR. HAYDEN. I ask the gentleman whether they do not have these pools abroad or some similar arrangement?

MR. CRISP. I have heard that they do.

MR. ANDERSON, of Kansas. That is upon the principle of total depravity. [Laughter.]

MR. CRISP. There are some very remarkable things in connection with that which, if I had the time, I might relate. I would suggest, however, to my good friend from Massachusetts in passing that the system abroad can hardly be compared fairly to the system in this country in view of the difference in the circumstances. But the point we make is that any system or practice which tends to destroy competition is an injury to the people who must use the roads.

Why is it not so? Can any good reason be given? The only reply made by the railroads is: "If you do not allow us to pool we will compete, and our competition will be ruinous; we will ruin ourselves if you do not stop us!" Why can not they compete legitimately as people do in other business? We think that they ought to do so, and therefore we prohibit pooling.

By the terms of this bill we create a railroad commission, and I ask the attention of gentlemen interested for a few moments to that point.

I say with the utmost frankness, that, as an individual, I preferred the bill without the commission, but I say also in the same breath that I am not to be classed with those who will not take anything unless they can get all they want, and that, with all respect I submit, must be the attitude of those gentlemen who oppose this bill because of the commission. What are the powers of that commission? In particular cases, under the fourth section of the bill, they may relax the rule therein set up. As to other matters, they may require the railroads to make returns of their accounts, their stocks and bonds, their running expenses, rates of charge, etc.

Where the complainant invokes their authority they may pass upon a given case between the individual and the railroad company. When they so pass upon the case their finding upon the facts is *prima facie* true. They have no power to give vital force and effect to their judgment, but it is *prima facie* true in the courts of the country. Is there anything in this power that is alarming or dangerous to the public? Is there anything in this bill that should lead representative men, men who have had large experience in public affairs, to say that nowhere in this country are to be found men of power enough, men good enough, men honest enough to administer the law?

I should be ashamed, sir, of my people if I believed in any such theory as that. I should be ashamed to come before the country and state that I did not believe it was in the power of the President of the United States, with the concurrence of the Senate, to select men wise and upright and honest enough to carry out this law. I am not one of those who believe that human nature is so utterly depraved that we can find nobody left who is honest and upright. What other powers are there than those I have enumerated. None.

Mr. Speaker, we do not drive the complainant to the Railroad Commission. If he chooses to go there he has the right to go there and invoke this power which is created by the government for his protection; but if he prefers, for any reason, to go to the courts of the country, they are open to him. The same judge who passes upon his rights of property, his rights of life and liberty, will there pass upon his rights in his dealings with the railroads.

Objection is made by some gentlemen who are in the main friendly to this bill, because we have not conferred jurisdiction upon the State courts to hear and determine these questions. I have two replies to make to that criticism. Waiving for the present the question of our power, by an act of Congress, to give to the courts of a State jurisdiction to try a matter of this character—a statutory case—waiving that, I say to those gentlemen that if we had insisted upon putting that provision in this bill, we would have had no agreement. Under the bill as it stands no great injustice or hardship can arise to the citizen.

He can go to the commission, but if he is one of those who, either from suspicion or for any other reason, believe that this commission will not do right, then he can go into court and file his suit and have it tried as every other case is tried, the only difference being that it is proposed by this bill to allow to such an individual in every case of recovery a

reasonable attorney fee, to be taxed by the court. That provision is, I admit, an exceptional one, and some complaint has been made of it as a hardship.

The answer I make to that complaint is, that on the one hand is the humble individual, the small shipper, while on the other is the great corporation with its wealth, its employees, and its power. To put them upon something like an equal footing, we say to the poorest man in the land, who feels that he has suffered a wrong at the hands of one of these corporations, that he shall be enabled to test the question before the courts; and we say to him, if you prove to have been correct in your judgment as to the wrong inflicted upon you, then we will enable you to enforce your rights by paying the counsel that you employ for that purpose. Is not that fair enough? Are we to be told that because we do not provide that these matters may be tried and determined in the State courts we leave the railroads free to discriminate, and that they are still permitted to go on in their oppression of the people?

I commend this idea to those gentlemen who base their opposition upon that ground.

MR. CALDWELL. In the proviso of the fourth section power is granted to this commission to make exceptions under the long-and-short-haul clause. That was my great objection to the original Cullom bill, because I believed such a grant of power ought never, under any circumstances, to be given to the commission or anybody else — a power to make some and break others. Now, will my friend tell me the difference between the clause as contained in the bill agreed upon by the conference committee and the original grant of power to the commission under the Cullom bill?

MR. CRISP. In the Cullom bill, Mr. Speaker, as the gentlemen will find by turning to it, these words are stricken out, "and from the same original point of departure or to the same point of arrival." Those words were stricken out because, in our judgment, they put a limitation upon what we understand to be the rule that in no case should a greater amount be charged for a shorter than a longer haul. With that language in the Cullom bill implied that there might be cases where a greater charge might be made for a shorter than a longer haul. By striking out those words we made the rule general that in no case could such a charge be made, no matter what the point of departure or the point of arrival might be.

As the gentleman understands, a practice exists among the railroad companies by virtue of which, at competitive points, freight received over one line goes cheaper than if received over another. Now, with those words in, there would always be that exception in regard to the point of departure or the point of arrival. With those words stricken out, the law is general; and that was the sole object in making the change.

The Senate bill provided that the commission might make general regulations exempting common carriers from the operation of that rule. We restricted that by requiring it to be done only in special cases after examination. That is the only difference between the two sections, as I understand.

Now, the only power of the commission after that is to require pub-

licity of the rates of the railroads, to require them to make return of the amount of their stocks and bonds. Gentlemen all recognize the importance of a provision of this kind. One of the great troubles in the way of ascertaining to-day what is a reasonable charge by a common carrier is the fact that stocks are watered, and it is hard to find out what is the actual cost of a railroad.

Watered stocks, bonds issued for speculative purposes, all these enter into the present computation of the railroad companies in fixing the sum upon which they must earn a reasonable interest. The object of the publicity required in this bill is that when resort is had to the courts, when you appeal to the enlightened conscience of an intelligent jury, they may understand exactly the cost of the plant and the cost of transportation, so as to determine what is or is not a reasonable charge. The bill provides that you can search at law the conscience of every officer of a railroad. You can force him to disclose any fact connected with transportation. If the fact is such that it would expose him to criminal indictment, then we provide that it shall not be so used against him. If it is a mere question affecting damages, then of course it may be used; and it enables the suitor to get his case fairly and fully before a jury.

There is one other provision to which I shall call attention, and then I shall close. As I said at the outstart, nearly all the provisions of this bill are to be found to-day in the common law. One of the great purposes we have in view is to aid the common law by providing a penalty for its violation other than the penalty of damages. At common law a trespass or a wrong gives the party aggrieved the right to sue and recover damages. We propose to say that, in addition to the common law liability, any transportation company violating this law shall be liable to have its officers indicted, and if found guilty they shall be punished by a fine not exceeding \$5,000.

If the gentlemen will examine the bill they will observe that it is framed in such a way as to declare certain practices unlawful. Turning to the penal section of the bill, you will find that if a common carrier shall be found guilty of doing anything in this act forbidden, or failing to do anything in this act required, the officers of the company may be indicted in the district courts of the United States, and if found guilty may be punished by a fine not exceeding \$5,000. This provision was intended to aid the common law. It was designed for the protection of every individual, no matter how humble, who may be wronged by the action of these corporations.

This, Mr. Speaker, is the bill. It is not, as I have already said, exactly as I would like it. It contains one or two propositions which I would be glad to have out; and there have been omitted from it one or two propositions which I would be glad to have in. But taken as a whole, I commend this bill to the representatives of the people who believe that wrong is being done by these corporations, who believe that the murmurs of the people all over this country do not come to us except as the expression of some injury perpetrated upon them by transportation companies.

To those gentlemen who desire to make the assertion of the power of the Government to control these corporations I commend this bill, and ask them to sustain it. The practices which it condemns are unjust

to the people. An honest investigation of the rights of the railroad companies and the people would forbid them; and in my judgment such practices, and the arguments by which they have been sustained, amount to an absolute assault upon public justice.

I believe in the paramount right of the people. I would not harm the railroads. I would allow them to pursue their legitimate calling, but I would bear in mind always the rights of the people. In my judgment the bill I now commend to you protects and preserves all the rights of the railroads, while at the same time it gives some modicum of relief to a long suffering and oppressed people. (Loud applause.)

PROTEST OF THE MINNEAPOLIS BOARD OF TRADE.

AGAINST THE INTER-STATE COMMERCE BILL—PRESENTED IN THE
U. S. SENATE JANUARY 10, 1887.

To the Senators and Representatives in Congress from Minnesota:

GENTLEMEN: The Minneapolis Board of Trade, at its regular meeting of December 22, 1886, unanimously adopted the following resolutions:

“*Resolved*, That while this Board of Trade fully approves the general principle of national legislation for the control and regulation of our inter-state carrying trade, and while in the main it concurs in the provisions of the compromise bill now pending before Congress, it thoroughly disapproves and deprecates the provisions of section 4, relating to what is known as the long and short haul, and of section 5, relating to pooling arrangements between parallel or competing railway lines. In the judgment of this board, section 4, if enacted, would give to the proposed national commission powers whose exercise would always be dangerous and might easily become destructive to the interests of the distinctively agricultural sections of the country.

“*Resolved*, That a committee be appointed with instructions to forward the foregoing resolution to our Senators and Representatives to Congress, accompanied with a letter of transmission which shall more fully set forth the views of this board.”

In forwarding these resolutions to you, permit the undersigned, as the committee appointed for the purpose, to call your attention to the following brief summary of objections, which, in the judgment of our Board of Trade, lie against sections 4 and 5 of the pending inter-state commerce bill, and respectfully to express the opinion that you can in no way render a more important or timely service to your constituents than by aggressively helping to secure the omission of these sections from the measure before it becomes a law. Allow us also in passing, to remind you of the fact that, of the entire membership of the Minneapolis Board of Trade, representing all leading branches of legitimate business and productive industry, not half a dozen have any pecuniary interests in railroads, direct or indirect, and we do not know of half that number who are so interested. The board speaks for the producers and shippers of the Northwest. Further, it is fully recognized that national supervision of our railroad system is necessary and best, in the interests both of the people and of the railways themselves; that this supervision has already been too long delayed; that there are wrongs to be righted and corporate abuses to be corrected, and that the pending inter-state commerce bill, when duly amended, will constitute a wise first step in the right direc-

tion. It is simply insisted that a measure which is necessarily experimental and which deals with the most complicated and far-reaching commercial problems known to mankind, vitally affecting the interests of every class and of every section, should not go so far, or attempt so much, at the outset, as to cause infinite damage where it might accomplish unmeasured good.

(1.) Section 4, relating to the "long and short haul," is, intentionally or unintentionally, vague and ambiguous in its language. If enacted into law its interpretation by the courts must, therefore, be wholly uncertain, its practical application doubtful, and some of its effects impossible to predict. This is sufficiently shown beforehand by the known fact that scarcely two persons understand the section alike—even zealous advocates of the bill, as it stands, differing widely as to the real meaning and intent of the words employed.

(2.) Assuming that the section means what its language naturally imports, the consequence of enforcing such a law would, we believe, be gravely injurious to many important interests in all parts of the country, but especially would such enforcement prove destructive in its effect upon the great agricultural section, of which our own State forms so important a part.

It would very greatly increase the cost to our people of heavy commodities of all kinds which are brought in from Eastern sections, including coal, without which our prairie farms could not be occupied.

It would ruinously depreciate the value of every bushel of wheat and every pound of beef produced in Minnesota, by compelling the railroads to adopt a freight tariff on through shipments eastward, which, if not prohibitory, would leave to our farmers no reward for their labor and invested means.

It would depress manufacturing industries and deprive many workmen of employment.

It would reduce to a minimum the trade of the Northwest by largely destroying the purchasing ability of our producers.

It would drive a large share of the long-distance traffic from American to Canadian lines.

It would cripple, if it did not bankrupt, many railroads, by compelling them to relinquish a large part of either their through or their local traffic—both of which are essential to their solvency.

The very people who ought to derive most benefit from legislation of this general character—the farmers and wage earners of the country—would be the first and greatest sufferers from its injurious effects.

(3) It is not a sufficient answer to say that the bill gives to the proposed commission discretionary power to avert these otherwise inevitable calamities. The ambiguity of language, already mentioned, renders it doubtful whether this power is fully given; and even if it is conferred, its exercise would be a most unnecessary and dangerous prerogative to be vested in any untried commission, however able and disinterested, under an untried statute, in a difficult field, where national legislation is now making its first tentative venture. At best, it gives to five men, about whose competency, experience, and integrity nothing can be known in advance, almost autocratic power over the market value of hundreds of millions of dollars of railway stocks and bonds, over the market value of

the agricultural products of half a continent, as well as of the lands upon which these products are grown.

So great a power and so tremendous a temptation to its abuse ought not to be presented unnecessarily to any committee of citizens or be made the foot-ball of politics. Besides, so enormous would be the task undertaken, and so extensive its domain, that no commission, however capable, could successively consider and adjust the inevitable frictions and controversies in time to prevent the predicted evils, if those evils in fact impend.

(4) Section 5, which arbitrarily prohibits the pooling of railway earnings, is not less objectionable than section 4. It proceeds upon the assumption that an amicable apportionment of traffic among substantially parallel railway lines destroys wholesome competition, creates a "monopoly," results in exorbitant transportation charges, and thus wrongs the general body of producers, shippers, and consumers, who constitute the people. With exceptions so rare as only to prove the rule, this assumption is a fallacy, and legislation based upon it must prove a hurtful blunder. The facts are that such apportionments of traffic are a natural and necessary outgrowth of the development of our national transportation system; that they constitute the only plan of self-preservation for railroads which time and thought and experience have been able to evolve from a most difficult and perplexing situation; that they are the only known and feasible alternative for that system of cut-throat competition which fomented chronic "rate-wars," and which, unless held in check, would end in the bankruptcy, first of the weak lines, and then of the strong ones—for a bankrupt railway, having no responsibility to bondholders or shareholders, is the most reckless and destructive of competitors. These adjustments and divisions of traffic, known as railway pools, do not raise transportation charges above a reasonable level. Almost without exception they have resulted in holding rates steadily at the lowest point at which the business can be done at a living profit. This is notably illustrated just now, as you are aware, in our own section. Never was there a closer pooling arrangement between trunk lines than that which now exists between the six roads leading from Minneapolis to Chicago yet never were freight tariffs so low as at the present time, and never were the people better accommodated.

The well-known fact that, concurrently with the development of the railway pooling system, railway rates have steadily, greatly, and everywhere decreased is a summary refutation of the whole theory on which section 5 is founded.

The pooling or apportionment system, besides preserving railways from insolvency, and railway investments from destruction, directly benefits every business community by giving some degree of uniformity and stability to transportation charges, and thus enabling business men to shape their course with greater certainty and safety. A railway rate war, although it temporarily reduces the market price of transportation below actual cost, is universally and justly regarded as a misfortune to all legitimate lines of trade. Obviously it is of no advantage to the public to enjoy any service at less than its reasonable cost, including a fair return upon the capital invested in rendering that service. The rule of unregulated and unreasoning competition, followed by the "survival

of the fittest," when applied to railroads, means their own ruin, with resulting calamity to every other business interest which is worth preserving.

The railway pool, honestly administered, is the natural balance-wheel of interstate commerce. Section 5 of the pending bill does not provide or suggest any substitute for this regulative and conservative agency. On the contrary, it would seem to render commercial chaos legally obligatory.

(5) It is not a sufficient answer to say that if found to be injurious in their working, these provisions may be repealed at the next session of Congress. The mischief that can be accomplished by their operation during a single business season is simply immeasurable, and there is not the slightest necessity for assuming the risk.

The interstate commerce bill has adequate scope for its initial purpose without including the sections to which objection is here made. Omitting these, the bill lays the broad foundation of a system of salutary legislation, which a little time and experience will develop and perfect. It is evolution, and not revolution, that the situation calls for. Such a policy will avoid the risk of serious and disastrous mistakes; at least it will not invite that demoralization of now reviving business, that shock to commercial confidence, that stagnation of enterprise, that aggravation of the labor difficulties, that wholesale depreciation and destruction of values which many competent and disinterested students of the problem foresee in case the bill becomes a law in its present form. The panic of 1873 was precipitated and intensified, if it was not largely caused, by injurious State legislation affecting railroads, hastily enacted in response to unreasonable clamor. It would seem to be hardly the part of wisdom or of statemanship to incur even the liability of repeating that experience, and on a larger scale during the present century.

With great respect, your obedient servants,

A. B. NETTLETON,
H. A. TOWNE,
EDMUND J. PHELPS,
T. B. WALKER,

MINNEAPOLIS, Minn., January 5, 1887.

Committee.

MR. ALBERT FINK ON THE NEW LAW.

Commissioner Albert Fink, in February, 1887, made public the following careful analysis of the principal features of the interstate commerce law, as he construes it:

In order to determine whether the present tariffs of the railroad companies comply with the requirements of the law regulating interstate commerce, and, if not, what changes are necessary, it is of the greatest importance to obtain a correct interpretation of the sections of the law bearing on the establishment of tariffs. This interpretation must be made in accordance with the language of the law, and not according to any explanation of it given while the interstate commerce bill was under consideration in congress.

Sections 1, 2 and 3 of the act prescribe the general principles upon which transportation charges should be made, but they do not specify and direct how these principles shall be carried into practical effect. The law requires that rates shall be just and reasonable, but does not say what constitutes just and reasonable rates. This is left to the carriers to decide—a difficult task, considering that the problem is to make just and reasonable tariffs over 130,000 miles of railroad owned and operated by so many different independent companies, whose co-operation in making reasonable joint through tariffs is absolutely necessary.

In questions so complicated and of such great diversity of character, the judgment of different parties may honestly differ, and yet should it be found that the honest judgment of the railroad managers differs from the judgment of the commissioners or the courts, in matters requiring expert knowledge, the railroad companies are liable under the law to heavy penalties, although they knew not beforehand what the law requires of them. The railroad companies find themselves placed in a most difficult position. They can not stop the operation of their roads until they ascertain what the law means and what they are to do under it, but they have to interpret it as best they can, and run the risk of being punished for putting a different construction upon it from the construction which may hereafter be given by the commission and the courts.

I propose to interpret the law strictly in accordance with its language, and, where that is ambiguous, to solve the doubt by keeping in mind the object for which the law was passed. This object is clearly expressed in sections 1, 2 and 3—there can be no misunderstanding about it, viz., the transportation charges of the railroad shall be reasonable and just.

I shall first deal with section 4, regulating the charges for long and short hauls. While sections 1, 2 and 3 lay down the general principles upon which tariffs are to be established, section 4 is the only one in

which it is attempted to lay down a specific rule, but it is so indefinite that it admits of different constructions. The first part of this section reads as follow — omitting the clause: “under substantially similar circumstances and conditions.”

“That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included in the longer distance.”

There could be no misconstruction put upon this part of the section, as it is an absolute prohibition of charging more for a shorter than for a longer distance; but by introducing the clause “under substantially similar circumstances and conditions,” this prohibition is qualified; and it may be lawful under dissimilar circumstances and dissimilar conditions to charge more for a shorter than for a longer distance. The law does not specify what circumstances and conditions would justify a greater charge for a shorter than for a longer haul, and we must, therefore, inquire what are the different circumstances and conditions referred to which justify an exception to the general rule.

These circumstances and conditions must necessarily be such as to legitimately influence the relative charges for long and short hauls. The law can not mean any other circumstances and conditions. It can not refer to extraneous matters, as, for example, to the conditions of the weather, whether it rains or snows, or whether it is hot or cold, but it must refer to the conditions and circumstances which from the very nature of the case control transportation charges; and the principal elements that control transportation charges are the cost of the service and competition, using the word “competition” in its widest sense — competition with water routes, competition with rail routes, competition between markets, etc. These are the main factors regulating transportation charges, and have done so at all times in this and all other countries. It must, therefore, be these conditions and circumstances to which reference is had in this clause.

If it can be shown, for example, that it costs a railroad more to carry freight for fifty miles over its road than it costs to carry the same kind and quantity of freight one hundred miles, this clause would be an authorization for charging more for the fifty mile service than for the one hundred mile service; or, if it can be shown that the rate to the end of the one hundred miles of road is fixed by water transportation, hardly sufficient to pay the railroad the cost of doing the work, without any or without an average profit in the capital invested in the road, the railroad company would be justified in making a lower rate to the station one hundred miles distant than it does to the station fifty miles distant, provided, however, that the rate to the fifty mile station is reasonable in itself — not as low as the cost of water transportation would be, but not higher than the cost of railroad operation and a reasonable interest on the cost of the road. The shippers at the one hundred mile station enjoy the natural advantages of their location on a navigable river, while those who live in the interior are necessarily under disadvantages. This discrimination exists in the nature of things — it is not unjust; it is not the result of the arbitrary action of the railroad transportation companies, who are compelled to regulate their charges in accordance with the circumstances

and conditions of the situation as they find them. The railroad company would prefer not to make the lower charge for the long haul, but to assess the people along the line of the road ratably, according to the distance which freight is carried; but this is rendered impossible by the very nature of the case when railroads compete with water routes, because of the cheaper cost of transportation by water than by rail.

In all cases, therefore, where the cost of the service and legitimate competition justify a higher charge for a shorter haul than for a longer, section 4 does not prohibit it, but the charge for the short haul must, of course, come within the restriction laid down in section 1—viz., it must be reasonable and just.

Assuming that this interpretation of the first clause of section 4, down to the proviso, is correct, the question will be asked, what meaning is to be attached to the proviso, which reads:

Provided, however, that upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

In order to properly interpret the meaning of the proviso, which does not seem quite in harmony with the first part of the section, it is necessary to bear in mind that the original bill as reported by the Senate committee to the Senate did not contain in the first part of the fourth section the qualifying clause, "under substantially similar circumstances and conditions." It made the prohibition of charging more for a short haul than for a long haul absolute; but it is obvious that the enforcement of such a rule would result in great injury to the commerce of the country. Discretion was therefore given to the commission in the proviso to suspend its operation; but it is evident that after the qualifying clause, "under substantially similar circumstances and conditions," had been inserted by the Senate in section 4, there was no longer any necessity for the proviso, as no further exemption is needed for the operation of the first part of the section as amended by the Senate. Bearing this in mind, and reading the proviso in connection with the first part of the section, it can only mean that in cases where the circumstances and conditions are similar the commission may relieve the carriers from the operation of the rule when application for such relief is made. Should no such application be made, the commission have no cause for action under the proviso.

The qualifying clause in the fourth section, "under substantially similar circumstances and conditions," therefore leaves the determination of whether a greater charge can justly be made for a shorter haul than for a longer, under different circumstances and conditions, to the judgment of the carriers, in the first place, to be finally passed upon by the courts. Section 4, therefore, does not prescribe a more definite rule than section 1, by which the carriers could be guided in determining in all cases what are reasonable and just charges. That section might therefore have been omitted altogether, as it conveys no other meaning than that which is already expressed in section 1; viz., that the railroad charges shall be reasonable and just.

There can be no doubt that the above is the correct interpretation of section 4; it fully carries out the intent and object of the law. If the long and short haul rule had been made absolute, it is obvious that the very object of the law could not have been attained; instead of regulating commerce the law would have obstructed it: instead of preventing unjust discrimination it would have created it; it would have stifled competition with water lines and increased the transportation rates; it would have deprived the people of facilities to ship to distant markets. These evils could not have been prevented by the exercise of the commissioner's power to exempt the carrier from the operation of the long and short haul rule, because it would have been an impossible task for the commission to investigate and decide the numerous cases that would come before them. The commission could not exempt any one railroad or line from the operation of the long and short haul rule without at the same time giving relief to all other railroads whose tariffs are affected thereby; otherwise, great injustice would be done both to the railroads and to business communities. It certainly was not the intention of the law to throw the transportation business of the whole country into confusion, which would be the result if section 4 were interpreted to make the long and short haul rule absolute and only subject to suspension by the commission.

In case of a doubt as to the proper construction and meaning of the law, it must be construed by the carriers in accordance with the avowed and clearly expressed purpose of the law, and not in opposition to it; otherwise, the carriers would lay themselves open to the imputation that they did so for the purpose of making the law obnoxious. Between the two alternatives—either to fail to construe the law as it may finally be construed by the courts, or to construe it in a way that would avoid this risk but result in the obstruction of commerce—the right course to pursue, it seems to me, would be to construe it with a view to carrying out the object and intent of the law, trusting that such construction will finally be sustained by the court.

We now come to the consideration of section 2, upon which different and contradictory constructions are placed. It contains the following provision:

That no common carrier coming under the provisions of this act shall charge, demand, collect or receive from any person or persons a greater or less compensation for any service rendered or to be rendered in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.

Here, again, the question arises as to what are the circumstances and conditions referred to, which, if dissimilar, justify different charges for the same service performed; and the answer is, that they are circumstances or conditions which legitimately influence and control transportation charges—the cost of the service and competition, as before explained. Taking, for illustration, a specific case, that of the Boston and Albany Railroad receiving at Albany four car loads of freight, one originating at Albany, the others at Chicago, St. Louis and Cincinnati respectively,

and all destined to Boston. The question has been raised whether the Boston and Albany Railroad is obliged, under section 2, to charge precisely the same for hauling each car load to Boston, or whether the circumstances and conditions differ so as to justify different charges for each car load. In order to decide this question we must consider the present practice of the railroads in conducting the transportation business over two or more roads. The railroads have agreed with each other to establish through rates and fares all over the country, to issue through bills of lading, and sell through tickets. Instead of shippers and passengers having to make their own arrangements with each of the carriers whose road they want to use, the carriers subject to the provisions of this law have voluntarily associated themselves to act for each other as forwarders and agents, so that parties desiring to use many roads practically have to deal with only one, and every possible facility and convenience to the public is thus offered. It is necessary to speak of these great services which the railroad companies are rendering to the public by their voluntary co-operation because these arrangements have given rise to the system known as "pro-rating," by which each road agrees to take for its compensation for the service it renders a certain portion of the through rate which may have been established between certain shipping points. These through rates are not under the control of each individual railroad company, as the local rates are; they are adjusted in accordance with the laws of trade and competition, and it may here be remarked that the present established through rates are in accordance with the principles laid down in section 1 of the law—they are, as a general rule, reasonable and just.

The share of a through rate which a road may receive is generally determined by the relative distance over which it carries the freight, as compared with the total distance. It is evident that this proportion must vary as the through rate, the total length of the route, and the length of each road in the route vary. For this reason it may happen under the practice of through billing that the Boston and Albany Railroad will receive a less compensation for a car load of freight from Cincinnati than for one coming from Chicago or St. Louis, although all these cars may be carried over its road on the same train. This is in the nature of the case. It is a condition which is imposed upon each road by being a party to joint rates on through shipments, in accordance with the present practice of the railroads in this and all other countries.

Is this practice to be declared illegal by the second section of the law? There can be no doubt that if this section did not contain the qualifying clause "under substantially similar circumstances and conditions," it would forbid the practice of prorating, but by the insertion of this clause, and taking into consideration the different circumstances and conditions legitimately influencing the rates, apart from the cost of the service, different rates may be charged for the same service.

Let us see what would be the result if the railroads of this country were required under this law to make the same charge for transporting similar kind and quantity of freight over the same part of its road, regardless of the circumstances and conditions above referred to. Each road would then have to charge its local rates on all traffic. The through rates from and to the various points in the country would be the sum of

the locals of the different roads in the line. They would necessarily be much higher than they are now, and they would be different by different routes, instead of being uniform between the same points of shipment, as they are at present. It would deprive the public of the advantages they now enjoy by reason of the through arrangements. Rates from distant points would necessarily be so high that it would stop, in a great measure, the export business, and while the railroads would, perhaps, be fully compensated for this loss by getting higher local rates on domestic business, the people would be great sufferers. If such a state of affairs were to continue long it would bring ruin to this country. This would inevitably be the result if the qualifying clause that different charges may be made for the same service under different circumstances and conditions, had not been inserted; and it also must be clear that the words "circumstances and conditions" mean not only the cost of the service, but competition and all other conditions legitimately influencing transportation charges, such as I have mentioned in connection with the through business; and it will be seen that these circumstances and conditions are of such great importance that the prosperity of the country may depend upon their having due consideration in the execution of this law.

There should, therefore, be no doubt entertained that under section 2 the railroads can make different charges for the same service performed, if it is performed under different circumstances and conditions legitimately controlling the charges.

Having shown that under section 2 a railroad may make different charges under dissimilar circumstances and conditions for hauling the same kind and quantity of freight over the same portion of its road, the question may be raised as to whether, under section 4, the maximum charge for a short haul on a railroad is to be determined by the local rate charged for a long haul on the same road, or by the lowest compensation such a road may receive as its share of a through rate. It must be observed that the law nowhere deals with the share of a through rate, but only with the rates in the aggregate, and properly so, because the shippers are only concerned with the aggregate charge which they have to pay, and not with a share of a through rate which each of the several railroads forming a through line may receive. The division of a through rate is a matter of private agreement between the railroads, and does not affect the public. If the through rates in the aggregate conform to the law, that is all that the law requires.

This view of the case is further supported by that section 6, providing for the publication of rates makes a distinction between the tariffs of each railroad (a word defined in section 1 as meaning "all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease") and the through tariffs—"the tariffs that any common carrier may establish in connection with some other road, or joint tariffs." It is made compulsory for each railroad company to publish its tariff between all stations on its own road, but it is left optional with the carriers to establish joint tariffs, and if they do the same must be reported to the commission, who will direct whether and to what extent they shall be published. If joint tariffs are established by the carriers, they must be made in conformity to the law. No more

must be charged for a shorter than for a longer haul in the aggregate, over the same line, unless different circumstances and conditions justify it.

Attention is called to the use of the word "line" in the fourth section, which it must be inferred means something different from the word "railroad" as defined in the first section — it evidently means a route or line formed by a number of railroads between the points of shipment or destination; and the joint tariffs of such line can only refer to the aggregate charges made to the public and published, and not to the subdivision of a through rate between the several roads constituting the line. Indeed, it might be inferred from the use of the word "line" in section 4, and the omission of the word "railroad" from this section, that the long and short haul rule applied only to joint tariffs and had nothing to do with the tariffs of each railroad, much less with the share of the through rate each railroad may receive. For these reasons it seems clear to me that the compensation a railroad may receive as its share of the through rate is not to influence in any way the adjustment of rates on long and short hauls, and that it is only required to bring the total or aggregate rate over the same line under the provisions of the law.

It is very important that a decision should be reached at once as to the proper interpretation of the second and fourth sections of the law, as, until this is done, it will be impossible for the railroad companies to determine whether any changes are necessary in their present tariffs to make them conform to the law.

There are other sections of the law requiring interpretation, but I have confined this paper to the discussion of the two sections affecting the establishment of tariffs, so that their revision, if necessary, may be begun at once.

ALBERT FINK.

MR. ALEXANDER OPPOSES MR. FINK'S VIEWS.

On February 22, 1887, Mr. E. P. Alexander, president of the Central Railroad Company of Georgia, wrote the following criticism of Mr. Fink's position:

SAVANNAH, GA., February 22, 1887.

Mr. Fink very clearly states that the interstate commerce law is to be interpreted, not only by the conflicting explanations given by different members of congress, but by "its language, and, where that is ambiguous, by keeping in mind the object for which the law was passed."

In other words, when we have followed any line of argument, based upon the ambiguous language of this bill, to its conclusion, before accepting this conclusion, we must examine it in the light of the end or object which congress had in view in passing the law. If the conclusion should be plainly one which congress did not have in view, our argument has ended in "*a reductio ad absurdum*," and must be faulty in its premises, or illogical in its process.

Applying this test to Mr. Fink's conclusion on section 4, I think we are confronted with just that result. He makes of section 4 an absolute nonentity. In his own language, in drawing his conclusions, "that section might have been omitted altogether." That conclusion alone seems to me to absolutely refute the argument leading up to it.

The final test of the real meaning of the law can only be had in a court, and before a judge and jury. It seems to me a vain hope that such a tribunal will ever accept a construction of this law which will make of it—nothing—a thing which "might have been omitted altogether."

And going over the argument in detail, it seems to me that the fallacy in the premises is also obvious. It is not stated in so many words, but the entire argument proceeds upon the assumption that the author and supporters of this bill understood the results which must follow from abolishing all lower rates upon longer hauls in the traffic of the country. The violence of such an assumption can hardly be exaggerated.

Mr. Fink reasons "it is obvious that the enforcement of such a rule would result in great injury to the commerce of the country." But that it is "obvious" only to those who are experts in the business—who know how the lower rates upon longer hauls are forced upon the railroads by circumstances beyond their control. To the average citizen, voter, and legislator, the injury to result from prohibiting a less charge on the longer haul is not only not "obvious," but he absolutely refuses to be convinced of it, and he has insisted upon passing this law to put a stop to the practice.

An interpretation which would make of section 4 a legalizing of present practices, as regards long and short hauls, instead of an effort to change them, would exactly reverse its intent.

The protestations of railroad men and experts, and their predictions of the results which must follow, have had no effect beyond inducing

the proviso to section 4, which allows the commissioners to suspend the operation of the law in special cases. It would be an utterly superfluous provision if it were intended that the existence of competition, at the more distant point, should itself justify a lower rate. Under this interpretation of the section, it is impossible to imagine an actual case where there would be need for a commission with power to suspend its operation. There probably never was a case of charging less for a longer haul but under constraint of competition, and I can not conceive of any other ground upon which a commission would or should authorize it. If the authority of a commission is not needed to permit it under competition, it is not needed at all. The fact that a commission is provided proves conclusively that this tribunal alone can authorize a less charge for a longer haul under ordinary competition.

The plain English of the situation seems to me beyond doubt or question. The author and supporters of this bill have believed, and do believe, that the railroads can and will reduce their short haul rates rather than abandon their long haul rates.

And they have forced the issue upon the railroads under terrible penalties. It seems to me vain to hope to escape it by putting an interpretation upon the law which would make of it but a jumble of words means nothing. The "intent" of the law is a matter of public notoriety, and when it is accepted section 4 is very clear and emphatic legislation.

It has been suggested that a prompt compliance with its requirements will be held by the country as an effort on the part of the railroads to make the law odious.

I do not see how it can be so regarded. Not to comply with it, except at the end of the law, can more justly be held to be an effort to override and defy it. In this dilemma, and in view of the severe penalties and heavy risks attendant upon any construction which can not be maintained before a judge and jury, there seems to me but one safe course to pursue. Tariffs should be at once prepared conforming to the intent of the law as generally understood. These tariffs should be immediately submitted to the railroad commission provided for in the law to meet the very emergency which we believe is upon the country. The effect of abolishing lower charges upon longer hauls should be clearly pointed out to the commission, and their authority invoked to relieve from the operation of the act every road which applies. As soon as any one is relieved, the relief of every other one must follow, one after another, as bricks in a row knock each other down. Otherwise the commission would be guilty of palpable and unfair discrimination between equal competitors. And unless they begin promptly, by relieving the lines in competition with Canadian lines from the operation of the section, the latter lines and the cities of Canada will take off business legitimately belonging to the United States to an extent which must speedily educate both the commission and the people.

To this result—the education of the people—or at least of the law makers—we must come before there can be peace and mutual prosperity. It seems to me that we postpone that day by any effort to evade the issue made by section 4.

We should refuse to run any risks of the penalties of the law, but promptly and frankly accept the situation and place the whole responsibility upon the railroad commission.

E. P. ALEXANDER.

MR. FINK'S REPLY TO PRESIDENT ALEXANDER.

On February 25, 1887, Mr. Albert Fink wrote the following letter to Gen. E. P. Alexander, in reply to his remarks upon Mr. Fink's interpretation of section 4:

NEW YORK, Feb. 25, 1887:

GEN. E. P. ALEXANDER,

President Central R. R. & Banking Co. of Georgia, Savannah, Ga.

MY DEAR SIR: I have your favor of 23d inst., and also your remarks upon my interpretation of section 4 of the Interstate Commerce law.

I am afraid you have not fully understood me. I do not say anywhere that section 4 amounts to nothing, but simply that it amounts to no more than sections 1 and 3, which provide that rates shall be reasonable and just, and that no unjust discrimination shall be made against localities; and that by the insertion of the clause, "under substantially similar circumstances and conditions" in section 4, it permits a greater charge being made for a short haul than for a long haul, where it is just and reasonable.

I read the section according to its language and not according to the interpretation given by Mr. Reagan and others, and it seems to me that you contradict yourself when you say, in the first place, that you propose to construe the section by its language, and then construe it by what some of the supporters of the bill intended should be its effect. You say "it is not stated in so many words," but you interpret the bill by what you think some of its authors meant it to be, and even by what a portion of the public expect it to be, while I interpret it simply by its language.

There is no doubt in my mind that some of the supporters of the bill meant its effect to be what you state; but others give it exactly the same interpretation as I do (Mr. Cullom for example), so that after all you will have to fall back upon the language of the law and not upon what those gentlemen intended it to mean.

Now, this brings us to the only question at issue, viz: What is the meaning of the clause, "under substantially similar circumstances and conditions?" I have endeavored to show that it means the cost of the service and competition. The whole question is simply one of the interpretation of that clause. If it means nothing, then I think the long and short haul rule in section 4 is absolute, and can only be varied by the Commission. If it means cost and competition, then the railroad companies are obliged, in the first place, to put a construction upon it, subject, of course, to the final ruling of the Commission and the courts. Each railroad company, of course, is at liberty to interpret that clause as it chooses, and perhaps the general disposition is to be on the safe side,

and say that it means nothing. I have no objection to that interpretation, but I believe the clause means a great deal, and that only by placing a proper construction upon it can the Interstate Commerce law be carried into effect and accomplish reforms, without introducing abuses.

You seem to have determined to educate the people by placing a rigid construction upon section 4 that will revolutionize the transportation business of the country, and I do not know but what that may be a good plan; but it does not seem to me to be the intent and spirit of the law, as it reads, although it may have been the intent of some radical, ignorant legislators who helped frame the bill.

In an opinion given by Mr. George Davis, counsel of the Atlantic Coast line, which Mr. Walters was kind enough to forward to me, Mr. Davis quotes the following:

"A statute is an act of the Legislature as an organized body. It expresses the collective will of the body, and no single member of it, nor all the members as individuals, can be heard to say what the meaning of the statute is. * * * Whatever may be the views and purposes of those who procure the enactment of a statute, the Legislature contemplates that its intention shall be ascertained from its words as embodied in it. And courts are not at liberty to accept the understanding of any individual as to the legislative intent."—*State v. Psartlow*, 91, No. C. A. 525.

I do not think that you are justified in interpreting the law according to the views entertained by Mr. Reagan, but that you must take the language—and that does not justify your construction.

I think you have entirely misunderstood me when you say that I hold that section 4 legalizes the present practice as regards long and short haul charges. I should first like to know what the present practice is before expressing such an opinion. What I meant was that where present practice is in accordance with the intent and spirit of the law and where the rates are reasonable and just it may be continued; where it is not, it must be abandoned; and I have no doubt that when the railroad companies examine into their present practice, they will find it necessary to make many changes in their tariffs to make them conform to the law; but why should they make any changes where they comply with the law and where their charges are reasonable and just?

You do not seem to have given any weight to the introduction of the qualifying clause into section 4, which at once relieves that section of its harsh and unjust features. That clause is in the section, and whether it came there by a mistake and contrary to the wishes of the radicals, it is not necessary for us to consider. All we need to know is simply the fact that it is there, and that it modifies the law and makes it reasonable, when without it it would be unjust, pernicious, and lead to the most serious consequences to the commerce of the country, as well as to the railroads. It is the saving clause, and I do not think the railroad companies have any right to disregard it and construe the law without giving due weight to that clause.

I am sorry that you published your paper in the shape of an argument in opposition to my interpretation. Would it not have served the same purpose if you had made your argument independently of mine, and giving your own interpretation on its merits? I feel sure that you did not correctly understand me, and as I do not desire to enter into any controversy on the subject, I am placed rather at a disadvantage.

I also enclose you an extract from Mr. Davis's opinion, citing a few

American cases which sustain the interpretation given to the clause "under substantially similar circumstances and conditions" as including competition.

Yours very truly,

(Signed.)

ALBERT FINK.

Will you not send a copy of this letter to the parties to whom you have sent your paper?

[*Enclosure.*]

EXTRACT FROM OPINION OF GEO. DAVIS, ESQ., COUNSEL FOR THE ATLANTIC COAST LINE, REGARDING INTERSTATE COMMERCE LAW.

The contention that shipments made from competitive points are not "under substantially similar circumstances and conditions" with those made at non-competitive points, is not without authority to support it. It has the sanction of a highly-respectable text writer: "It may be said that the rule is, both at common law and under most of the regulatory statutes, that *under like circumstances* and the same class of goods, the same rates should be charged to all." Wood's Railway Law, Vol. I, p. 565. And in illustrating this general rule the author says, page 571: "Thus, if A and B are each the proprietors of a coal mine, and both send their coals to the same market, A's mine being within twenty miles of the market, and B's forty miles; in order to place A and B on an equality in the market, the company would not, for this reason alone, be justified in charging A the same rates for hauling his coals to the market that are charged to B, as this would be a palpable inequality of rates to deprive A of his natural advantages. But *where there is a competing line from B* and not from A, and the competing line carries the freight from B at the same rates that it is carried from A, the company would be justified in making such discrimination."

In *Rogan vs. Aiken*, 9 La. 609, the Supreme Court of Tennessee, after recognizing the common law rule that the carrier is bound to carry at equal rates for all customers in like conditions, decided that "a common carrier may discriminate in favor of persons living at a distance from the end of the route, where the object is to secure freight which would otherwise reach its destination by a different route; and other customers not in like condition will have no right of action because of discrimination, if the charges made against them are reasonable."

In *ex parte Koehler*, Receiver, in the Circuit Court of the United States, 21 Am. & Eng. R. R. Cus., 52, 58, the Legislature of Oregon passed an Act entitled "An Act to regulate the transportation of passengers and freight by railroad corporations," which provided, among other things, that "no greater or less compensation shall be charged one person than another for like contemporaneous service," and "no greater rate shall be charged for carrying similar property a short haul than a long one, in the same direction."

Deady, J.: "I assume that the State has the power to prevent a railroad company from discriminating between persons and places for the sake of putting one up or another down, or any other reason than the real exigencies of business. * * * But where the discrimination is between places only, and is the result of competition with other lines or means of transportation, the case, I think, is different.

For instance, the act prescribes a reasonable rate for carrying freight between Corvallis and Portland, or from either to points intermediate thereto. But Corvallis is on the river and has the advantage of water transportation for some months in the year. The carriage of goods by water usually costs less than by land, and as water craft are allowed to carry at a rate less than the maximum fixed for the railway, they will get all the freight from this point unless the latter is allowed to compete for it. * * * * * If the Legislature can not require a railway corporation, formed under the laws of the State, to carry freight for nothing, or at any less rate than a reasonable one, then it necessarily follows that this provision of the Act can not be enforced so far as to prevent the railway from competing with the water craft at Corvallis and other similarly situated points, even if in so doing they are compelled to charge less for a long haul than for a short one in the same direction."

THE REAGAN AND CULLOM BILLS COMPARED.

BY GEORGE R. BLANCHARD, COMMISSIONER OF THE CENTRAL
TRAFFIC ASSOCIATION.

[*Written for the Railway Age, June, 1886.*]

Watt's puff of steam has materialized into the vastest energy of the world. To regulate only its railway branch wisely in its commercial relations to a great nation is worthy any man's thought.

The complexities and difficulties of governmental administration of railway rates are greater in the United States than in any other country. This is caused by its greater area, larger railway mileage, longer coast lines, more numerous navigable lakes and rivers, diversities of soil, climate and products, differences between rates on high mountain gradient and level lines, the rapidity of traffic development, our desire to grasp foreign markets, the crudities and dissimilarities of railway charters and legislation, the proximities of foreign governments and carriers and the anomalies and contrarieties of state and national authority within and across non-physical lines. It has taken half a century in insular and parliamentary England to reach its present legal stage there and it is still incomplete and unsatisfactory. How much more difficult here!

The phenomenal increase of our people and the rapid opening of remote, new, and often sterile localities have combined to induce if not justify some excessive charges. Bonuses, discounts and speculations in bonds and shares gave fictitious values to many railways. Railway and legislative collusion not infrequently procured the sanction of law to excessive capitalization. As rapidly as new lines competed with and reduced the rates of older ones, unreasonable disparities between through and local rates often resulted. Competition became strife, strife became rancor, rancor begat reprisals, drawbacks, preferences, discriminations and excesses on local rates to equalize losses on through traffic. It is time this was controlled.

The time is here, too, when an honest railway and an honest forwarder, engaged in completing an honest commercial transaction at honest, open and non-preferential values for product and carriage, should have support and protection from law against the dishonest railway which combines with the cut-rate forwarder. Railway managers of old and responsible lines, who intend to deal fairly and impartially with the public are often compelled to bury that desire under the preferential and narrower policies or needs forced upon them by adjacent or longer or more poorly equipped railways. The latter cut rates to deplete the former, and law now encourages rather than stops them. Farther than that, the thoughtful sentiment of intelligent railway man-

agers favors non-preferential rates from conviction, and that they be equitably proportioned upon through and local traffic and justly adjusted as between long and short hauls. When such broad and just views compete with narrower railway knowledge, or purposes or manipulations of less breadth and honesty, the honest manager goes down and usually amid plaudits from many law-makers, who regard it as the result of competition. The honest railway class should seek and have law against the latter as clearly as an honest merchant requires it against the procurer of any other goods under false pretenses. A wise and well administered transportation act should therefore prove of as much value to well-intending railways, as to the great bulk of patrons who ask no advantages. That the people demand it is apparent. It should be mutual, carefully formulated to avoid needless disturbances of trade and finance, be practical, easily applied, and neither too restrictive nor too lax. It will involve more capital and revenue than the nation's debt and incomes, or any industry; more labor than any other special calling, and more complications than any or all mercantile traffics combined; directly or indirectly it will touch annually nearly every inhabitant as a patron or beneficiary, and next to government bonds, the values involved represent our credit, prosperity or depression, at home and abroad, with investors and peoples at large. Led therefore by different causes and interests to common premises, the views of the advocates of congressional regulation again diverge as authoritatively shown by the variance in two measures pending at Washington. They mark the present stage of the crystallization that began with the granger laws and a comparison of their salient features is the purpose of this paper.

The Cullom bill was introduced in the Senate February 16, passed its third reading May 11 by a vote of 47 to 4 and went to the House.

The Reagan bill was introduced in the House January 6, and passed the 8th of that month by a vote of 158 to 75. The majority each bill secured in its own branch of the co-ordinate congress indicates radical differences between which all railway legislation in the current session may fail, but it will come in its season.

The Senate bill apparently results from a determination to treat the question justly, keeping wrongs, rights and difficulties in view, after traversing the principal transportation districts to ascertain them. The House bill is stamped with the idea of its author that railways are monopolies, practicing aggrandizement and discrimination in preference to fair dealing; and that the public rights in them at least equal those of their owners. Hence its narrower plan to regulate sternly from the standpoint of antagonism rather than mutuality.

The Reagan bill is entitled: "A bill to regulate interstate commerce and to prevent unjust discriminations by carriers."

The Senate bill is entitled: "A bill to regulate commerce."

Neither is properly entitled. They do not attempt to regulate commerce but only the transportation element or percentage in commodity values. That is not commerce but the carriage of commerce. It is like taxing one stave in a barrel.

With this note in passing, the following citations demonstrate the relative equities of the bills:

FIRST—TO WHAT TRAFFICS DO THEY APPLY.

(a) The House bill is silent as to passenger transportation, an omission which has been frequently suggested to its author. The Senate bill protects both with like safeguards, provisions and penalties.

(b) The Reagan bill says:

"That it shall be unlawful for any person or persons engaged alone or associated with others in the transportation of property *by railroad*," etc.

The Cullom bill says:

"The provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly *by railroad, or partly by railroad and partly by water* when both are used."

The Reagan bill therefore exempts connecting boats on lakes, rivers and oceans. If they be parallel to the railways, it permits those free and unregulated water carriers to control the rates of one or many other restricted rail carriers. A rail and lake transaction from Chicago to New York is exempted on the lake by the Reagan bill. It is controlled under the Cullom law the same as are parallel all rail carriers. The Reagan bill therefore encourages unregulated water routes to contest rail charges, but if they fail so to do the bill provides how to regulate the remainder.

(c) Another difficult phase of this problem is the close proximity of competing railways in Canada. The necessity for the equality of American lines is apparant. The senate bill applies to property transported

"from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States."

The Reagan bill contains no such provision, although it is essential as well as just that shipments between Chicago and Boston and New York through Canada shall be upon no preferential footing as against the rails wholly on our own soil.

The fifth section of the senate bill also proposes to enjoin foreign carriers from doing business in the States if, and while they violate the terms and conditions applied to our own railways.

SECOND—EQUALITY OF CHARGE AND SERVICE.

The requirements of both measures, that all charges for like services shall be just and reasonable, are proper, but in carrying them into effect the recognition by the senate bill of the practical in trade as contrasted with the impracticable in theory in the house bill is striking.

(a) The house bill says all railroads

"shall furnish, without discrimination, the *same facilities* for the carriage, receiving, delivery, storage and handling, * * * and shall perform with equal expedition," etc.

This means that if freight taken to New York for export, misses a steamer and is stored a week waiting another—all freight must be stored a week if demanded. It means that if large quantities of freight are lightered to a steamer small quantities must be lightered to a private warehouse. It means that if a railway builds a siding to a large factory or coal depot, it must build one at the same point for a small individual

shipper. It means prohibition of all special facilities for large and regular traffics that are not given to spasmodic and small tonnages. It means, for example, that no special speed shall be given traffic in refrigerator cars for a charge of sixty-five cents per one hundred pounds over the same freight carried in ordinary cars at thirty cents. Both the extra rate and speed are declared illegal.

The senate bill declares it unlawful:

"To make or give any undue or unreasonable preference or advantage in any respect whatsoever, or to subject any description of traffic to any undue or any unreasonable prejudice or disadvantage in any respect whatsoever."

This is plain, practical, business justice and sense. The former is technical, obstructive and impracticable.

THIRD—AS TO REBATES AND DRAWBACKS.

The Reagan bill, section 2, says it shall be unlawful "directly or indirectly to allow any rebate, drawback or other advantage in any form upon shipments made or services rendered."

This is prohibition, however just, uniform or universal such allowances may be, or how good the business reasons for them.

The Cullom bill, recognizing that there are just drawbacks like a merchant's "ten per cent. off" for cash or quantity, says (condensed) that

"If any common carrier shall directly or indirectly, by special rate, rebate, drawback or other device charge greater or less compensation for any service rendered than to any other person for a like and contemporaneous service, in the transportation of like kinds of traffic under similar conditions, it shall be liable to all persons charged the higher rate for the difference between such higher rate and the lowest rate charged upon like shipments during the same period, and shall be liable to pay a like rebate or drawback to all shippers between the same points, while such contract or understanding operated."

That there are proper railway drawbacks, if properly allowed, should go without saying. What objections exist to a drawback on all coal shipped to Buffalo docks in winter, refundable when the coal is sent thence by lake to remote points in the spring alike to all under the same circumstances? Why should the same drawback be allowed to local consignees at Buffalo for occasional car-loads delivered in winter, switched repeatedly and held on sidings that consignees may unload it leisurely by their wagons in favorable weather?

If a manufacturing establishment receives largely of crude material and ships largely of manufactured product, what objection holds to a drawback if the two regular rates prove prohibitory, and the same drawback is allowed to all under like conditions? Why should a local receiver and forwarder of an occasional car-load of the same article at the same point be entitled to the same aggregate rates as that large manufacturer?

A drawback is now allowed at Boston on tonnage exported via that city in order to equalize that route with the route via Baltimore, and that the charge from Chicago to London via Boston be the same as via Baltimore. Moreover, is not this in the interest of all the people and all railways? Should not Boston be permitted to do this when the same

thing is done and encouraged at Montreal, provided Boston allows the drawback uniformly? Farther, if it is so allowed, why should the same drawbacks apply on similar shipments to Boston city for local consumption? The senate bill seems to recognize these just customs and requirements, but makes them uniform. The house bill prohibits them all and in this instance, as in others, will act to restrict rather than extend American trade, and give the nearest and cheapest port a preference. The senate bill is business-like and practical in providing that any excess paid by one party because another had a rebate shall be refunded in money to the lowest standard of rates. The house bill leaves the remedy in the courts where it is now with all its delays and vexations.

FOURTH—PUBLICITY AND CHANGES OF RATES.

The Reagan bill provides:

(a.) "That railways shall adopt and keep posted up schedules which plainly state the different kinds and classes of property to be carried, the different places between which such property shall be carried, the rates of freight and prices of carriage between such places, and for all services connected with the receiving, delivery, etc., and that the accounts for such services shall show what part of the charges is for transportation."

It prescribes the sizes of type and other details.

The Senate bill provides:

"Such rates, fares, charges and classifications shall be made public so far as may in the judgment of the commission be deemed practicable, and said commission shall from time to time prescribe the measure of publicity."

Note again that the House bill exempts and the Senate bill includes passenger fares.

No public necessity requires useless publicity. No railway can be compelled by national law to publish its rates if the shipping and destination points are in one State. How far does the House bill require the Boston & Albany Railway to publish rates from Boston westwardly? Is it the three or four thousand destination points in the West; if not, what points shall and which others shall not be published? What right has that railway to publish rates from Boston to Colorado Springs without that authority from all railroads thereto, and suppose the road from Denver to Colorado Springs or any other in one State refuses to give its rates to railway agents at Boston or Portland or Albany or Trenton, how can the first carrier publish them, and what is the penalty if they *do not* when they *can not*? Multiply this query by the number of railroads, stations, conflicting interests and refusals of many western roads to authorize intervention in their rates, and the inability of forwarding companies to specify them, and what can result but confusion and impracticability? Rates can not be published to every point that may be called for.

The Senate bill first guards just public requirements and then gives to a proper power the right to specify the points between which rates must be published, but with proper mutual consideration it says:

"Such part of them as it may seem practicable for such common carriers to publish."

The House bill makes no stated limit to its requirement in this respect.

(b) The Reagan bill requires that the part of each freight rate chargeable for transportation shall be separated from that which accrues for station service. This is modelled upon English law, where cartage is usually included in the rate at starting and stopping points, but is impracticable here. If rates are published from Saratoga, N. Y., to Topeka, Kan., how can the agent at Saratoga specify what part of the through rate on each class shall represent station charges at Topeka, and how, in turn, can the agent at Topeka do the same thing for Saratoga? Again, if the same rate for a short haul or a long haul, plus the varying cost of station service at small as compared with large tonnage points makes the gross charges more for the short haul, is it not prohibited by the act? Therefore, why separate the charges and confuse the accounts to no purpose? It costs, say, fifteen cents per ton to handle freight at Buffalo. It costs over two dollars per ton at many small stations. To publish this disparity with each freight bill is needless and confusing.

The Senate bill wisely deals only with the totals of the carriers' charges and permits railway business to proceed within legal limits with as little embarrassment as is required to secure the public justly. This is adaptation and forethought.

(c) The Senate bill provides that where passengers and freight

"Pass over lines or routes operated by more than one common carrier, having joint tariffs of rates or fares, it shall be deemed a compliance with the law if copies are filed by any one of the said common carriers, and that no carrier shall be liable for the failure of any other carrier to observe and adhere to the rates, fares and charges made and published."

This is just, simple and ample. It locates the offense and penalty upon the violating carrier. The house act, apparently requiring the publication of a rate from Philadelphia to Butte City, Montana, makes the first carrier whose bill of lading is issued responsible for the violation of the rate of the final and remote carrier, which it can not direct or control. This is another instance of its more equitable and better business methods.

(d) The Reagan bill says:

"Copies of rates, printed as aforesaid, shall be posted as provided at least five days before the same shall go into effect, and the same shall remain in force until another schedule shall be substituted."

The Cullom bill provides:

"No advance in public rates, fares, charges and classifications shall be made except after ten days' public notice, but reductions in the same may be made without previous public notice."

The Senate bill thereby conforms to railway practice on both increased and lessened rates. If reduced rates were published five days before their effect, a small relative business would move in those five days, but tonnage would crowd for a time thereafter. River, lake and ocean carriers, exempted from the House bill, make advances, reductions and variations daily without notice. Parallel railways which can not reduce for five days will therefore lose business competitive with them not only during that time but thereafter, because at the end of each five days water routes can again reduce enough to absorb the traffic. After railways have decided to reduce, why should the public be deprived of

that benefit for five days by rail alone? The Senate bill is more practical and just and protective of public interest, because it gives the people the prompt benefit of reduced rates and delays for ten days the imposition of higher rates.

FIFTH—INTERCHANGES OF TRAFFIC AMONG RAILWAYS.

Both bills treat of interchanges between different and perhaps competing railroads. The universal business principle not to permit a rival to use the facilities of an owner for the former's benefit is recognized in the Senate bill in the following language:

"No common carrier shall be required to give the use of its tracks or terminal facilities to another carrier engaged in like business."

The House act, contrariwise, provides that it shall be unlawful

"To prevent the carriage of such property from being continuous from the place of shipment to the place of destination, whether carried on one or several roads."

Nothing limits this word "several." Suppose the New York Central lines from Chicago determined to flood the Pennsylvania railroad from Pittsburgh east with unprofitable freight, against the direct all the way lines of the Pennsylvania railroad, what rates could the latter charge from Pittsburgh in such event? The House bill says this disturbing and irregular transportation shall be continuous from shipment to destination. To be continuous it must have continuous through rates and continuous through cars. Mischievous power is put in the hands of the first carrier. Has not the second carrier the undoubted right to refuse such rates, traffic and cars? The Reagan bill authorizes, empowers and directs that every railroad shall receive freight from every other railroad, regardless of the first owner's injured local or through interests, or its rates and objections from any cause, and that the two shall make continuous transportation regardless of unities or disparities of interests.

The Senate bill wisely recognizes the inherent and vested rights of railway proprietors like those owning other property, and says that no common carrier shall be compelled to give his facilities to his rival. The Reagan bill is much like legislating that any man may move into and through another man's house, regardless of the latter's protest, charges, occupancy, rights, title or notices.

SIXTH—AS TO THE SYSTEMS CALLED POOLING.

(a) The House bill says:

"It shall be unlawful for any person or persons carrying property as aforesaid to enter into any contract, agreement or combination for the pooling of freights or to pool the freights of different and competing railroads by dividing between them the aggregate or net proceeds of the earnings of such railroads or any of them."

The Senate bill reserves the rights of the people and prudently says:

"The said commission shall specially inquire into that method of railway management or combination known as pooling, and shall report to congress what, if any legislation is advisable and expedient upon that subject."

The purpose of both bills is the maintenance of equal, non-discriminating, reasonable, just and proper comparative rates. If pools accomplish those results, how do they violate sound public policy and why

should they be prevented? If six railroads from Chicago have six different rates for six patrons on the same article to six consignees in New York, the one which carries at the lowest price for the most favored patron will ruin the railways charging and the patrons paying higher prices. A proper pool stops this preference by public and effective administration for the uniform benefit of carriers and merchants. Should not wise legislation therefore as clearly direct that six railways have the same rates between the same points as that one railway should not have six different rates for the same patrons, points and products? How can the mercantile or public result differ between six railways having six rates from the same place and one railway having the same six rates? The same commercial disturbances, preferences and discriminations ensue in both cases. If government properly requires one railway to make its rates equal and non-preferential, why should it not equally require that six railways make them so, or legalize the contract which does it? Our legislators hesitate at this, as if asked to legalize a conspiracy, sanction extortion or enforce preferences, but it is the short road to justice and equality. The English clearing house act so provides.

If pools maintain rates at extortionate standards, other clauses of both the Senate and House acts properly intervene. If they do not, in what manner do pools differ in public results from other methods of maintaining equal rates? Concede that rates are universally brought down and equalized by the national authority in either act, what can then be the public objection that they be administered and the traffic divided by a pool? No forwarder pays more or less, and forwarders have the great advantage that all railways will then act as one for all forwarders impartially treated as if one firm.

If rates from all competing centers are to be maintained alike to all points of common destination by all railways therefrom that result can be reached only by conference and agreement between rivals. A pool is one of those forms of agreement intended to secure to railroads acting faithfully to rivals and the public their due shares of traffic, under penalties to be paid by any dishonest and evasive carriers which practice sinuous methods. The results in no wise change the rates charged, whether reasonable or unreasonable, and public sentiment, speaking intelligently through large transportation bodies like boards of trade, now largely favors pools. The Senate bill apparently recognizes such forms of traffic unity, as *intended* to achieve the uniformity of rates essential to commercial equality, and directs its commission to find out if that is the practice and result.

The House bill refuses to even consider that question.

Seventh: Long and short hauls.

(a) This feature in both bills has provoked the widest discussion and diversity of opinion.

The house bill says:

"It shall be unlawful * * * * to charge or receive any greater compensation * * * * for a shorter than a longer distance on any one railroad, and the road of a corporation shall include all the roads in use by such corporation, whether owned and operated by it under a contract, agreement or lease by said corporation."

The writer propounded the following queries to Judge Reagan, before his committee, in February last:

"If the Pennsylvania railroad controls and operates its line from New York to Chicago, does its *minimum* pig iron rate upon the level and straight track of the Fort Wayne road when the forwarder loads and consignee unloads, fix the *maximum* rate on a similar shipment for the same distance from Philadelphia to New York, involving the enormous terminal costs in Philadelphia and Jersey City, the still greater added outlays for crossing the Hudson river by boat, and finally the great additional terminal expense on New York piers?"

He finally replied that he so intended.

Can more unjust transportation legislation be conceived? Barge transportation alone across the Hudson at New York costs double the entire cost on the Fort Wayne extension in Indiana, but that fact is not to avail. The two transactions have no commercial, geographical, financial or any other relations to each other, and why should the one rate in any wise act upon or limit the other?

Under this ruling the Union Pacific can not charge more on mountain grades of 220 feet per mile, where it can haul but six cars, than for the same distances on the plains where it can move sixty cars. Why the mountaineer should pay no more, or the man on the plains be denied his advantages, has never been made to appear.

(b) I asked Judge Reagan "if the rate charged by a railway company when it loaded and unloaded freight at its expense could be more than a similar transaction for the same distance elsewhere, where the owner loaded and unloaded the freight." He answered that it was intended to make the two transactions alike. The element of cost to which railway agitators have so long and often appealed, is thus apparently discarded by their national interpreter.

(c) The writer also asked Judge Reagan if tonnage from a branch road passing thence to a main line junction, over that main line to another junction, and then over a second branch road to destination, involving four terminal services and differences in gradients, cost, risk, handling and quantities, should be at the same rates that would prevail for a like distance, upon a direct and level main line, having an enormous traffic, no handling and but two terminal services. He replied with the determination to make the charges alike. Thousands of cases can be cited where this is an application of the rejected *pro rata* principle.

The Reagan bill therefore makes the minimum railway rate charged for any distance on any part of any line for the lowest cost and under the most favorable circumstances, its maximum charge for another similar transaction, on another part of its line, under the most unfavorable circumstances and involving the highest cost. Of course this ruling will make every railway put up its level-road and low-cost rates.

(d) The author of the House bill was further questioned upon the following facts:

The Boston Hoosac Tunnel and Western railway runs from North Adams, Mass., to Mechanicsville, N. Y., forty-six miles, including a bridge crossing the Hudson river. That company's proportion of a through rate from Boston to New Orleans on freight carried by rail against the ocean, and which freight it neither loaded, unloaded, way-billed nor saw, and only hauled as a mere transfer company, was very

small. Was it the maximum it could charge another forwarder of the same article, from North Adams town to a consignee living at Mechanicville, for whom it furnished warehouses, switching power, and receiving, handling and loading, unloading and delivery labor at both ends? He again replied that by his act this smallest charge should regulate the latter.

I then asked: "If boxes of boots and shoes were bought at Boston to be sent to New Orleans by rail over nine railroads, should the local rates of the nine roads, on nine transactions, involving eighteen rehandlings, be exactly the sum of one through rate and transaction and two handlings from Boston, which through rate was made in competition with outside steamships unregulated?" After much discussion Judge Reagan replied that the act so intended.

(e) When the onerous burdens produced by the rigid application of this most unjust rule through the Union bring down local transactions to the proportions of through rates which railroads share to develop through commerce, the serious public consideration is that the railways will cease from sharing through rates that thus reduce their local charges and will make their lines or parts of lines local, on through as well as local freights, whether in one or two States, as far as to their interest and they practically and legally can. No law can compel a railway to share a through rate it has not assented to, nor has declined or disagreed from. Therefore, to revert to the case of the Boston boots and shoes to New Orleans, the Boston & Albany and the other carriers would discontinue the carriage from Boston to New Orleans of all traffic which limited nine local charges. If they withdraw from that through traffic, would not the steamship companies then advance their rates? In what practical way, then, would the Reagan bill accomplish the regulation intended?

Steamships sailing from Baltimore to Boston, for further example, would sail unregulated by the House act, but the same law is to require railways from Baltimore to Boston to cut down all their local and through transactions to the level of the limitations forced upon them by that untouched water carrier. The water carrier may land en route at Norfolk and at Providence, make any through or local rates it pleases, higher locally than through if it likes; different for the same shipments for the same points upon the same ship if it chooses, and the Reagan bill leaves it untouched, but parallel railways are clutched with prohibitions and made to disgorge an excess thus legally defined, or retire from the traffic. Will they not then advance their rates on traffic remaining to them? The same statement is broadly true of the unregulated competition of the Atlantic and Pacific coast lines and canals, rivers and lakes in the interior, which restrict parallel rail carriers, and at a time when the government is spending hundreds of millions to make water competition with rail more effective.

(f) Traffic from China to England carried across the United States leaves either Chinese or English money or both in the hands of our railways, laborers and investors. Such transactions have no bearing upon the interests, commerce or equalities of our own people, but the Reagan bill says that every railway link in that transcontinental line shall be debarred from charging more for local carriage over the part of its line used than the through transaction yielded over the same rails.

The vast sea frontage and interior water mileage of this country render such illustrations as this numberless and they cover a manifold and enormous traffic competitive with rail.

(g) Another and even more important phase of the long and short haul question is that the House bill will shut the farms of Nebraska out of the eastern markets, if the Nebraska grain rate allowed each carrier as its part of a through rate is to regulate the same carrier's local grain rates. If grain raised in the Genessee valley pays one-fourth as much to New York as does grain from Omaha—yet more per mile, what reason exists why the one should be advanced or the other reduced, and which result would follow?

In the case of the Pennsylvania road, where 85 per cent. of its traffic is local and 15 per cent. through, it would, of course, raise its through rates. Each railway would similarly decide which was best for it, and if interests and conclusions conflicted, the rates, trade and values would be disturbed, disorganized and injured. The interests nearest the seaboard would be particularly benefited by rates relatively much lower than now.

The same argument holds good with foreign trade. We can not send corn from Kansas to England if every local American railway rate is gauged by our attempts to put our remote farm products into England at lower than the local rates combined.

The necessity for a wise and statesmanlike basis of exemption as much in the interest of the people in preventing extortionate parallel steamboat charges, as in preventing prohibitory through railroad charges, is apparent from these illustrations.

(h) That the Senate partially endeavored to provide wisely for these constant contingencies, after discussing them all over the country, and that the House has restricted them unwisely without knowledge, appears first from the foregoing definitions by Judge Reagan, and next from a comparison of his rulings with the following Senate provisions:

"The commission may from time to time make general rules exempting such designated common carrier in such special cases from the operation of this Act" (long and short haul provision).

The Senate's final definition of long and short hauls is then stated in full as follows:

"It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation than the aggregate for the transportation of passengers or of the like amount of property, under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, and from the same point of departure or to the same point of arrival; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter, provided, etc., as for a longer distance."

The Reagan bill, as I have shown, does not limit the equality of long and short rates to traffic between the same points, in the same direction or upon the same part of the road. It computes branches with small traffics as no more expensive in operation than main lines with large traffics; it places the excessive cost of high gradients on a parity with the economies of level lines in States widely apart; it puts a level

double track road beside a river upon the same basis as a single track road climbing a mountain; it disregards all conditions of economy or costliness on different parts of a great system of road; it disregards loading and unloading, insurance, number of cars in a train and all of the other conditions which make rates justly variable.

The Senate language above quoted is a partial recognition of the thousands of varying conditions, but has, I think, been misunderstood by the public. It provides more thoughtfully that the rate shall not be the same "for a shorter than for a longer distance," but defines its meaning, as follows:

- (a) Over the same line.
- (b) In the same direction.
- (c) From the same point of departure, or
- (d) To the same point of arrival.

There are elements of just railway protection in these provisions. For example, it provides that the rate from Philadelphia to Pittsburgh shall not be exceeded by a rate from Philadelphia to any point east of Pittsburgh, nor by any rate from a point east of Philadelphia into Pittsburgh, because in the one instance it is the same point of departure, and in the other of arrival. The grades, conditions and line over which these transactions transpire are substantially the same, the receipt at Philadelphia and delivery at Pittsburgh are mainly the same, and the receipt, handling and delivery at local intermediate stations are not likely to vary as greatly as on the remote parts of a system. Note the fairer consideration of fact, cost, practice and equity in this application than appears from Judge Reagan's rulings on his own bill.

Then follows the amended Senate limitation:

"That this shall not be construed as authorizing * * * as great compensation for a short as for a longer distance."

This has provoked much discussion and clearly does not mean that rates *may* not be the same if reasonable and just, but only that the law withholds its sanction in cases where the same rate may be unjust. If not so qualified might not a long line like the Union Pacific claim the *right* to charge as much for fifty miles of interstate carriage as for one thousand? The law does not *prevent* the same charge nor does it now authorize it. It may be right and legal, but the law does not intend that *every* such charge shall be legalized by the act in advance of the fact. It is simply a negative withholding of governmental approval from an equal charge which *may be found* unjust. It is not a prohibition of an equal charge for a short and long haul if the national commission finds both reasonable. It merely reserves its rights and decisions. The context of this proviso, the reserved confirmation or dissent, and the power given to the commission to authorize less rates for shorter than for longer distances, all confirm this just view.

The Seaate bill in this regard protects forwarders to the fullest extent consistent with the rights due the railways. The commission appointed under the act will find many justifications for licensing long hauls at rates less than short ones, and the transcontinental California and New Orleans cases above cited are in proof. Can there be any doubt that railways should be thus licensed to-day from St. Paul to

New Orleans against the river that flows there? The French authorities license their railways to carry the products of the Mediterranean across France on their way to England at a less rate in France than the same product would pay if landed and consumed in France. This is a parallel to our foregoing transcontinental illustration. Germany and Belgium have authorized governmental tariffs which make exceptional provision for international transportation, against combined ocean and river routes. Similar exceptions are repeatedly granted by the English board of trade, as from Glasgow to Edinburgh and between London and Liverpool by rail routes competitive with water carriage. The three great rail lines from Liverpool to London charge less upon American provisions sent from New York to London via Liverpool, than the local rates from Liverpool to London on the same products, in just recognition of their rivalry with ocean carriage all the way from New York to London.

Such inequalities exist yet more numerous in this country by lake, ocean and canal. The lake rate on corn from Chicago to Buffalo is less than from Chicago to Cleveland, a lesser distance, because quantity, regularity of trip, facilities for loading and unloading at elevators, etc., differ. Erie Canal rates on corn from Buffalo to New York for enormous regular quantities are less than for occasional boat loads from Buffalo to Yonkers or West Point, where no elevator facilities exist. These constant commercial considerations can not be legislatively ignored. It seems the thoughtful purpose of the Senate to intrust the due and farther consideration of them to a railway commission. The House so far fails to adequately recognize the accepted rules of commercial conduct in the railway administrations which must deal with all commerce. I have not touched upon the legal pains and penalties of the different bills in which the more fair and mature consideration of the Senate law is equally shown.

The brief limits of this article preclude adequate representation of this vastly important question. I should have been glad to show how water routes regulate and limit rail rates; how our rail rates compare with those of Europe; what has been done by voluntary but permanent reductions of freight rates in recent years; how lands distant from markets have been plowed and tilled as much by the locomotive as by the immigrant; how our foreign commerce has been developed by through rates; the effect of the legal immunities of roads which like the New York Central, or like the Pennsylvania main line from Pittsburgh and Erie to Philadelphia, on lake and river traffics are all in state limits while their rivals are interstate; what the effects of this indirect independence are, and how railways and publics thrive mutually only by mutual relations. All these questions enter deeply into the problem, but I have contented myself with a simple comparison of portions of the bills which touch the practical business questions. Legislation upon them must be new and crude and should therefore be flexible. England enacted and repealed over a thousand bills before it reached its present board of trade act. We can not even adopt that law because the conditions differ so much. It is presumption to believe that with the multitudes of greater carrying complications in this country, an act such as the House bill can solve problems which have defeated the wisest thought of foreign governments for fifty years. Every railway company should aid its

solution frankly, thoughtfully, promptly, concede just public demands, and recognize public rights and interests in the question and the rights of both stronger and weaker rivals. All this should pass without gain-saying.

The House bill makes no provision for a commission to consider, sift and report upon the gigantic difficulties. The senate attempts and intends to provide thoughtful foreknowledge. The House bill at once seizes and punishes an offender against its impracticable conditions and conclusions. The Senate bill warns and admonishes before arresting and punishing. Both acts must be administered over a vast railway mileage and national area, by thousands of general and local railway officials who have various standards of intelligence, purpose and integrity. A large majority of them mean right; the minority fail to do so, either through intent or lack of information. The vice-like and impracticable regulations of the House bill will fail their purpose, confuse commerce, throw rail rates into disorder, advance water route rates, cause the withdrawal of many through rail rates, and be of almost impossible daily application in the manifold transactions involved.

The Senate bill appears to have recognized the vast issues raised, the immense tonnage carried, the millions of diverse transactions to fall annually under its scope, the necessity for conference, concession and equity, and the public ignorance or misconception of the mutualities required. It provides a special tribunal through which the railways may make continuous representation to both branches of congress. Such a commission will educate the public as to their rights, and act as the medium for a better understanding. It gives that medium a warning, admonishing and then correcting and enforcing power. It looks to farther action. Railroads and sincere publicists should favor this commission, because it will or should separate the chaff of wrong and misrepresentation from the facts which are justly entitled to plead for both sides. Congress should have such a tribunal, experienced and wise enough to report impartially to it upon the interests, duties and rights of carrying corporations as well as people, and to state and formulate any proper additional measures just to all. This is better than undertaking to comprehend it all now through the smoked glass of prejudice or insufficient knowledge.

In this way harm to vested corporate or personal rights can be best avoided, legislation made intelligent, and repeals and re-enactments of crude laws avoided. The cautionary power of the government will, nine times in ten, stop the great majority of the irregularities justly complained of. Railways are seldom found now to defend indefensible old methods. The mere presence of the policeman on the corner prevents affrays. The enactment should be wise and broad, yet concise and practical. The government authorities should be accessible, their authority prompt, their machinery simple, their methods direct, yet their discretion justly limited.

INTERPRETATIONS

OF

THE INTER-STATE COMMERCE LAW.

The Trunk Line Passenger Meeting.

At a meeting of the joint committee of general passenger agents of the trunk lines and their connections held in New York City, March 4, 1887: the following report was adopted.

NEW YORK, March 4, 1887.

REPORT OF THE SPECIAL PASSENGER COMMITTEE.

It appears to be impracticable within the time allotted to present in detail all the changes in passenger tariffs, rules, and regulations which may become necessary under the operation of the act to regulate commerce, and the special committee will, therefore, attempt to state such general principles as they deem applicable in order to bring the administration of passenger business within a proper construction of the letter and intent of the law, and to make such further recommendations for changes in existing methods as they deem expedient and desirable, from the standpoint of railroad policy and public interest.

Your committee are impressed that the intention of the law is to prevent the imposition of unreasonable and unjust fares, to eliminate improper preferences, and to secure the stability and publicity of passenger tariffs. In order to accomplish these wise and just results without placing unnecessary restrictions upon privileges which have heretofore been enjoyed by the public, it seems necessary and proper to construe the law liberally with reference to its general scope and intention.

JUST AND REASONABLE FARES.

Your committee believe that, generally, the tariffs now in force for regular and differential fares of the first class in the territory of the joint committee are just and reasonable. These consist of the fares for first-class unlimited tickets, first-class limited tickets for limited express trains, and first-class limited tickets for continuous passage on ordinary trains. These classes cover by far the greater portion of the

Second-class fares are in use in both directions, but generally between cities from which considerable numbers of passengers are transported who are willing to accept poorer accommodations at less cost. Under the clause prohibiting discriminations, it will be necessary to establish second-class fares to some additional points, in order that fares for

a shorter distance, contained within the same line, shall not be greater than fares charged for a longer distance.

The fares for foreign immigrants arriving at the Atlantic seaboard in the steerage of ocean vessels are the lowest through fares which are in use, and are believed to be not unjust nor unreasonable toward the immigrant. The Legislature of the State of New York has fixed the maximum for such immigrant passengers transported within its boundaries, and this has the practical effect to influence and control immigrant fares from other points on that seaboard. We believe the tariff of immigrant fares which will take effect April 1 will conform in all respects to the law.

Having reference to the various clauses against discrimination between passengers under like conditions, we have arrived at the conclusion that immigrant fares ought not to be used for cash business at the various seaboard cities of the United States and that the concession to foreign immigrants must be confined to orders or tickets which they secure abroad in connection with their through ocean passage.

UNDUE PREFERENCES.

The law permits the giving of reduced fares to ministers of religion, but it does not permit, and clearly forbids, the giving of reduced fares to other persons than ministers of religion and officers and employees of railway companies, or free transportation to any person or class of persons whatsoever except to officers and employees of railway companies. In defining the term "ministers of religion" we accept the definition given by Webster's Dictionary, as follows: "One who serves at the altar; one who performs sacerdotal duties; the pastor of a church only authorized or licensed to preach the gospel and administer the sacraments."

MILEAGE TICKETS.

We recommend that the sale of mileage tickets be absolutely discontinued as soon as the consent of all the roads not present and whose assent is required can be obtained to this recommendation, and that the limit of those sold shall not go beyond July 31, 1887.

Forty-one companies concurred in the above. The only line represented at the meeting which did not vote in the affirmative took the matter under advisement, and will reply as quickly as possible.

The officers of the joint committee were requested to proceed at once to secure the vote of lines not represented at the meeting and whose assent is necessary.

EXCURSION TICKETS.

First. We define the term "Excursion Tickets," as used in section 22, to mean a round-trip ticket, sold at a reduced rate to a person who, under certain conditions, desires to make a journey within a given time to a given point and return.

Adopted unanimously.

Second. We believe that it is the intention of the law to leave all the questions of restriction, limitation, place and fares for the sale of excursion tickets in the discretion of the railway companies interested, respectively, within reasonable limits.

Adopted, six representatives dissenting.

The Minority Report on the above clause is as follows :

“ We believe that, if excursion rates are made, they should, under the law, be so made as not to unjustly discriminate between persons, corporations, localities, or any particular description of traffic ; and that such rates should conform to the long and short haul feature of the law.”

BAGGAGE.

It has been the custom of railway companies to transport a certain amount of personal baggage in baggage cars, provided for the purpose on passenger trains, for which no separate charge has heretofore been made. This custom has varied somewhat in different sections of the country, and for different classes of people. To the end that a uniform rule may be adopted, we recommend that the rule for the free transportation of personal baggage be as follows, and that no greater excess be allowed to go free, or at different rates than are named in this general rule :

(a) There may be checked free on each full first or second-class ticket, 150 pounds of baggage ; on each half first or second-class ticket, 75 pounds ; on each full immigrant ticket, 100 pounds ; on each half immigrant ticket, 50 pounds.

(b) Baggage of first and second-class passengers weighing in excess of the free allowance thus authorized shall be subject to a charge of not less than 12 per cent. of the lowest unlimited first-class fare ; provided, however, that no less charge than twenty-five cents be made in any case.

(c) No single piece of baggage weighing more than 250 pounds shall be checked as baggage by any of these lines, except for ship immigrants.

We recommend that this concession apply only to the personal baggage of travelers, such as covered and included in decisions at common law, to wit : the personal effects of the traveler, which may include his wearing apparel, worn jewelry, a book for reading on his journey, a watch, or other personal effects which are not merchandise, and which may vary according to the condition in life of the passenger and the length of his journey ; and that no commercial luggage, musical instruments, organs, pianos, donkeys, horses or theatrical scenery be transported as free baggage.

We recommend that all Excess Baggage Order Books and permits be at once withdrawn from sale.

COMMISSIONS.

We unanimously recommend that the payment of commissions for the sale of passenger tickets to any agent, firm, broker, scalper, or other person, be absolutely abolished by these lines ; and that all reasonable and proper influences be brought to bear upon all connecting railroads beyond the territory of this Committee, to take concurrent action without delay. We further recommend that all our agents be prohibited from receiving commissions from other companies, and that we urge all other companies with whom we interchange business to refrain from the payment of such commissions to our agents or to other persons in the territory traversed by our lines.

Adopted unanimously.

(92 companies have concurred.)

In accordance with this recommendation, it was agreed that the Commissioner of the Central Traffic Association prepare a circular to send to all ticket agents at once, stating that on and after April 1st, prox., no commission, rebate or other drawback will be paid to them by roads represented in this circular.

That the action taken here be telegraphed to the South-Western Association.

That a separate circular be sent to the Traffic Officers of connecting roads, requesting them not to pay commissions to our agents, or to others in the territory traversed by our lines, after the above date.

That instructions be issued to the agents of these companies that no commissions must be accepted by them from other roads for the sale of passenger tickets after March 31, 1887.

JOINT THROUGH TARIFFS.

In order to establish joint tariffs of through fares where two or more connecting railroads are concerned, and to the end that all the parties to such joint tariff shall be responsible for their proper observance in accordance with law, we recommend that all parties desiring to participate in through business authorize the representative road at each initial point to establish through fares by their respective lines, and indicate the basis upon which such through fares may be made by the issuing company; with the understanding that when such authorization has been given to the issuing company it can not be withdrawn, changed or modified by any device, except upon a similar formal notice to the issuing company. In order to secure this formal authorization we recommend that a circular be issued by the company desiring to participate in joint through fares, giving the proper authority to its connections and inviting similar authority; and that these circulars and the replies thereto be filed in the general offices of the respective companies. We further recommend that no through tickets be sold by any representative company at any initial point in the territory of these committees over any of its connecting lines after April 1st, prox., unless this authorization shall have been formally given, and that all joint through fares which have not been thus formally agreed to by each company interested be discontinued from that date.

In accordance with the above, the following forms of circular letters are recommended:

CIRCULAR LETTER "A" TO CONNECTING LINES REGARDING INTER-
CHANGE OF PASSENGER TRAFFIC—AFTER MARCH 31, 1887.

General Passenger Agent ----- Ry. Co.,

DEAR SIR:—This Company is revising its through passenger tariffs to take effect April 1st prox. Copies of these tariffs will be filed with the Commissioners at Washington, D. C., as required by the Act to Regulate Commerce.

It is deemed advisable to ask whether you desire this Company to continue to act, until further notice, as agent for your Company in the issuance of such forms of through tickets as are now on sale by this Com-

pany, and at such fares as have already been agreed between us to points on or reached by way of your road. It is impracticable to submit the new tariffs in detail, but they will be made to conform to the law, in conference with the representative of competing routes and in accordance with the usual and recognized principles for constructing such tariffs.

When once established, these joint tariffs will be strictly adhered to by this Company until formally changed and the changes advised to the Commissioners as prescribed by law.

In view of the severe penalties to be inflicted in cases of violation of the law, this Company can not consent to act as agent for any other company in the issuance of through tickets unless notified that it is authorized to so act, that the proposed joint tariffs will be satisfactory for the time being, and that the companies whose authority is thus obtained will refrain from the payment of a commission, drawback, rebate, or any form of consideration, to the agents or employees of this Company, or to any other person or persons on account of the purchase or sale of this Company's tickets in the territory adjacent to our line.

The necessity for a distinct understanding of the terms upon which this Company is willing to act as your agent after April 1st, prox., is obvious.

A prompt and favorable reply will enable this Company to complete its arrangements in time to conform in all respects to the law, properly protect the interests of all connections, and cause no inconvenience to the general public.

For the sake of uniformity will you kindly make your reply on the enclosed blank circular letter "B," noting thereon such special advices as you may desire to add.

We shall be glad to continue to receive tickets issued by your Company under similar terms and conditions; it being, of course, understood that in the adoption of new forms not already authorized, we shall be consulted as heretofore. Respectfully,

General Passenger Agent.

CIRCULAR LETTER "B"—REPLY TO CIRCULAR LETTER "A."

General Passenger Agent ----- Rd.,

DEAR SIR:—You are authorized and requested to act as this Company's agent in the sale of tickets to all points reached by its lines, in accordance with the terms of your circular letter "A" of -----

This company fully agrees with the conditions mentioned in your said letter "A" of -----, as per copy attached hereto.

Yours respectfully,

G. P. and T. A.

RATE BUREAUS.

In order to secure, as far as possible, stability and consistency in passenger fares throughout the territory of the Joint Committee, we recom-

mend that rate bureaus be established, as early as possible, under the direction of the respective Passenger committees, charged with the duty of publishing duly authorized through fares from points in the territory of the respective committees; and that the joint tariffs of through fares thus published be accepted by all our companies as the authorized and legal through fares over these lines.

DIFFERENTIAL FARES.

It will be admitted that some through lines may fairly compete for passenger business, which, by reason of length of road or other unequal facilities, can not maintain their usual volume of traffic at equal fares with their competitors. Such lines will, doubtless, in the future, as they have in the past, undertake to charge the public less for transportation between common points than their competitors. To prevent the confusion which would necessarily result from establishing such differences without any definite knowledge of their effect upon the currents of traffic, we recommend that differential fares for through and competitive business be established by consultation and agreement between the railroad companies interested, and that reports be made of all sales between points where differential fares are agreed upon to the principal office of the respective committees; and that comparative statements of such business be published to the parties interested, from time to time, for their information.

FILING AND PUBLISHING OF TARIFFS.

We understand that local interstate fares must be both filed with the National Commission and kept for public inspection, but that it is only necessary to keep in each station the fares in effect from that point. We also understand that joint tariffs of through interstate fares must be filed with the Commission at Washington, and afterwards published if the Commission so directs, but that no further publication is required by law until the Commission shall have directed in the matter.

LONG AND SHORT HAUL.

Under the section referring to the long and short haul, we understand that the law deals with fares in the aggregate, and that the proportion of a through fare, need not, of necessity, control local fares.

In the case of greater charge for a shorter distance, by reason of the competition of water lines or otherwise, your committee believe that they have no right to permit such fares to continue, or to be made without the authorization of the National Commission. For instance, a special limited rate of 60 cents is made between Wilmington and Philadelphia by reason of river competition; the regular rate between Philadelphia and the next station north of Wilmington being 72 cents; either the local rate should be reduced to the Philadelphia basis, or the National Commission should authorize an exception and so of all analogous cases.

If the fare from Portland to Chicago, by way of Boston, is made less than the fare from Boston to Chicago by the same route, the roads constituting the route from Boston should either reduce their Boston fare or refuse to accept tickets from Portland by way of Boston at the lesser rate without authority of the National Commission, and so of all analogous cases.

POOLING.

Your committee understand that the division of the proceeds of passenger earnings between different and competing lines is positively prohibited. They, therefore, recommend that all settlements for balances on passenger business accruing on and after April 1st, prox., be discontinued; but that in all other respects the organization, the agreements, and the business of the Trunk Line Passenger Committee and the Central Traffic Association, (Passenger Department) continue as heretofore, with such addition or modification as may, from time to time, be agreed upon, not inconsistent with the law.

Western Passenger Associations.

The general passenger agents of the lines of the Southwestern, Western and Northwestern Passenger associations, as a result of several sessions in Chicago in March, 1887, adopted the following formal statement of their interpretation of the interstate commerce law so far as it pertains to passenger traffic and submitted it to the general managers for final consideration :

For more definite and concise consideration, the subject has been divided into the following heads :

1. What does the law specifically require to be done by common carriers subject to its provisions ?
2. What is inferentially permitted ; or consistent and not forbidden ?
3. What does the law specifically forbid ?
4. What does the law inferentially forbid ; is believed to be inconsistent ; or is not desirable to be done ?

SPECIFICALLY REQUIRED.

1. Common carriers are required (see section 1 of the act) to apply the provision of the interstate law to passenger business from one state or territory of the United States or the District of Columbia to any other state or territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and to or from a foreign country to or from any state or territory.

2. The law requires that business carried within the United States or territories to or from adjacent foreign countries shall be amenable to the same rules as apply to interstate business.

3. All charges made for any service shall be reasonable and just.

4. For a like and contemporaneous service, and for the transportation of a like kind of traffic under substantially similar circumstances and conditions, a like charge shall be made.

5. The law requires carriers according to their respective powers to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines.

6. The law requires that every common carrier shall plainly print in large type, of at least the size of ordinary pica, and keep for public inspection in every depot or station, in such places and in such form that they can be conveniently inspected, schedules, showing the rates of fare for transportation of passengers and property (including baggage) which are in force upon its railroads, plainly stating the places upon the railroad between which passengers and property will be carried.

7. The law requires ten days' notice of any advance in rates, which notice shall plainly state changes proposed to be made, and the time when the changes will go into effect, and that such changes be shown by printing new schedules, or be plainly indicated upon the schedules in force at the time and kept for public inspection. Reductions may be made without previous public notice, but when made notice of the same shall be immediately publicly posted, and shall be immediately made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force, and kept for public inspection.

8. Every common carrier shall file its tariffs with the commission, and shall properly notify said commission of all changes made in the same.

9. Every common carrier shall file with the commission copies of all contracts, agreements or arrangements with other common carriers, or joint tariffs, which shall be made public when directed by the commission, said commission to prescribe the measure of publicity.

10. The law authorizes the commission to require annual reports in such detail and in such manner as the commission may require.

11. (Proposition under section 6 of the act.) This law requires the publication of tariff rates which apply only to roads owned, operated, leased or controlled by each independent corporation.

Example: The Chicago and Northwestern Railway is not required to publish rates from its stations to points on the Chicago, St. Paul, Minneapolis and Omaha Railway.

12. The mandate as to the observance of posted fares being in the local portion of this section. Is there anything in this law prohibiting the changing of coupon rates without any notice; or, in other words, does it prohibit cutting of coupon rates?

Answer—Ten days' notice of advance must be given, and immediate notice of reduction.

13. Are competing lines compelled to interchange business from a common point to a point local to one of them, and on which that one would otherwise get the entire haul?

Example: Could the Chicago and Northwestern Railway ticket Chicago to LaCrosse over its road, and then over the Chicago, Milwaukee and St. Paul Railway to a local station on the latter road without its consent.

Answer—No.

Provided, however, that if such connecting line receives business from one connection, it must not discriminate against other connections.

INFERENTIALLY PERMITTED, AND NOT FORBIDDEN.

1. The law inferentially permits first, second and third (emigrant) classes of passengers if the accommodations are as varied as the classes.

Children under five years of age, accompanied by parents or guardians, may be carried free. Children of five and under twelve years of age may be carried at half fare.

2. The law inferentially permits special additional charge for special train or other unusual service; for instance, special train to be chartered from Chicago to St. Paul at a special rate.

3. The law inferentially permits a variation in charges based upon the restricted availability of the ticket. For example, a ticket limited to continuous passage between two points may be consistently sold at less than the unlimited fare between the same points.

4. The law inferentially permits the issuance of mileage, excursion, or commutation passenger tickets, but does not permit a discrimination in favor of any person. For example, rates made in favor of Grand Army of the Republic or any other organized body, religious, secular, secret, etc., must be contemporaneously available to any person.

5. It inferentially permits reduced rates to ministers of religion, and free transportation to railway employees.

6. As the greater includes the less, it also inferentially permits the issue of reduced rates to railway employees.

7. It is understood that the managers expect the general passenger agents to say whether commissions are permitted under the law, and we therefore report that there is nothing in the law in relation to commissions any more than there is in relation to payment of any other compensation of any character. It will be for the managers to determine whether the payment of commissions shall be continued.

8. The question of passes or reduced rates for the families of railway employees is referred to the general managers for determination.

9. May mileage tickets be sold at any rate (not greater than the legal fare) that the common carrier may elect to charge?

Answer—Yes.

10. May they be sold at different rates to different individuals or firms?

Answer—No.

11. In regard to the issue of mileage tickets the general passenger agents recommend to the general managers that thousand mile tickets, if sold, must be sold to every person at the same price, that each ticket shall be restricted to use by the person whose name shall be entered upon the ticket, and that they shall be sold at a uniform rate per mile, $2\frac{1}{2}$ cents per mile is recommended; that each book shall be good for one thousand miles, no more nor less, and its validity shall be limited to one year from date of sale; baggage allowance to be the same for regular travelers.

12. May short line mileage be detached by a longer line between two competitive points? Example: By one line, Chicago to Kansas City, 521 miles, as against short line distance, 488?

Answer—Yes, provided a greater mileage is not detached for an intermediate haul over the same line in the same direction.

13. May a common carrier, making a differential or special fare over its own line, lawfully refuse to grant to a connecting line the right to use such fare contemporaneously from the line or territory of such connecting road?

Answer—Yes.

14. May a ticketing road charge more or less for same kind of ticket between two intermediate points by one connection than by another competing connection? For example, can Michigan Central legally charge \$19, Chicago, Ill., to Albany, N. Y., by its New York Central connection, and \$16.65 via its West Shore connection, as per quotation in Central Traffic association special tariff?

Answer—Yes, because of dissimilar circumstances and conditions.

15. May a higher rate be legally charged between two points for a regular first-class ticket, in the absence of any other rate or ticket between them, than for a restrictive or lower-grade ticket between one of the points and the farther point, or between two outlying points, or a longer haul over the same line, including the shorter haul between the first two points; or would the failure to provide the same grade or kind of ticket at a consistent (not higher) rate between the shorter as between the longer haul points be an offense as per section 10?

Answer—While the law inferentially permits the acceptance of lower than first-class rate for a ticket of restricted availability, it also requires the observance of the long and short haul principle.

16. Does the proportion received on a through ticket determine or affect the local charge, both interstate? For example: Council Bluffs to Chicago, \$12.50; proportion, Council Bluffs to Chicago on ticket Council Bluffs to Cincinnati, say \$10. Must the line withdraw the through ticket, or reduce its local to \$10?

Answer—No.

17. Must regular local or any other rates be printed and shown only between such stations as the railroad deems it good business policy to sell?

Answer—Yes.

18. If general passenger or ticket office sells tickets for interstate hauls between various points on its railroad, must it be governed by same rule as to publishing and posting the rates as in case of a regular station ticket office?

Answer—Yes.

19. Does the exemption in section 22, that "this act shall not apply to issuance of mileage, excursion and commutation tickets" exempt also the publication of the rates therefor between interstate points?

Answer—Yes, it does exempt the publication of such rates.

WHAT IS FORBIDDEN?

1. The law forbids special rates, rebates, drawbacks, or any other device whereby a rate can be reduced or increased to work discrimination against any person.

2. The law forbids any undue or unreasonable preferences to any person, company, firm, corporation, or locality.

3. Section 4 of this act forbids greater compensation for a shorter than for a longer haul over the same line, in the same direction, etc., but provides that "this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance."

Question—(a) Does the law require a less rate for a shorter distance than for a longer distance (6 years, 8 days)?

(b) What the law does not forbid is permissible, providing it is reasonable and just (13 years ; 1 nay).

(c) What the law says it does not authorize it does not permit (4 yeas, 10 nays).

4. We are of the opinion that the law prohibits the pooling of passenger earnings.

5. The law prohibits charging or accepting a greater or less compensation than the rates as established and published.

6. The law only inferentially permits us to give reduced rates to ministers of religion, but it does not permit us, and it clearly forbids, the giving reduced rates or free transportation to any other class, in which would be included the following : Theatrical companies, base-ball players, bicyclists, theatrical advance agents, students, laborers, lumbermen, Indians (wards of the nation), United States officers and soldiers or their families, inmates of national home for disabled volunteer soldiers, city police, members of the press (as courtesies, hotel employees, freight shippers, charity cases, deaf, dumb, and blind people, temperance workers, etc.

We suggest to the general managers for consideration, whether some of the most worthy of these cases can not be continued and reserved for adjustment under the direction of the commission.

INFERENTIALLY FORBIDDEN, ETC.

1. The law inferentially prohibits the issue of free or reduced transportation upon an indefinite basis to pay for advertising, or for any other alleged service, or for influence, in such manner as to work discrimination between persons (11 yeas, 3 nays).

2. It is recommended that the issue of transportation in exchange for services or commodities of any character be not permitted (7 yeas, 7 nays).

3. A fair interpretation of the clause which forbids unreasonable preferences to any firm, company, corporation, person, or locality, would inferentially forbid the giving away of transportation as a gratuity or compliment to any particular class or classes of persons not excepted in section 22 of the act.

4. Can a through interstate fare be legally charged which is greater than the combination of intermediate local fares of the common carrier or carriers for the route taken ?

Answer—No. Not if the separate fares constituting the combination or lines are of the same class, circumstances and conditions.

5. Would it be unlawful for a company regularly ticketing from Chicago to St. Louis to refuse to sell a passenger a ticket to St. Louis, who ask for such a ticket, and instead thereof to ticket the passenger from Chicago to East St. Louis, which would have the effect of evading the provisions of the interstate law ?

Answer—It would be inferentially forbidden.

6. Would it be unjust or inconsistent for a road carrying between two interstate points to make a lower rate between those two points than a rate between two intermediate points on the same line lying within one state ?

Answer—Yes.

7. If, owing to competition, a railroad company makes a low rate between two interstate points, may it decline to ticket between intermediate stations across the state line in order to save its locals from being cut by the through rate? For example, if the Chicago, Rock Island & Pacific railway should make a rate of \$8 between Chicago and Council Bluffs to meet competition, could it decline to sell from Joliet to Atlantic, Iowa, and force passengers to buy from Joliet to Davenport, \$4.22, and from Davenport to Atlantic, \$7.73, making an aggregate charge of \$11.95, which would have the effect of evading the long and short haul mandate?

Answer—No.

GENERAL RECOMMENDATIONS.

1. In case of a sudden reduction in regular fares, St. Louis to New York, and a ticket were sold to New York from Kansas City via St. Louis, based upon a former or higher rate in effect previous to the reduction, and such sale was made before the Kansas City line had an opportunity to revise and place its through rate to New York in harmony with the reduction east of St. Louis, would such issuing line from Kansas City be obliged to refund the difference in fares east of St. Louis?

Answer—No.

Furthermore would it be open to infliction of any penalty for charging a greater through fare from Kansas City to New York than the sum of the local fares from Kansas City to St. Louis and St. Louis to New York?

Answer—No; for the reason, see section 6, paragraph 5, of the act, which "provides that no common carrier party to a joint tariff shall be liable for the failure of any other party thereto to observe and adhere to the rates, fares or charges thus made."

2. Does the law require that interstate fares be the same in both directions?

Answer—No.

3. Is it consistent or desirable to continue the sale of excess baggage books at a reduction, say of 10 per cent. from the published extra baggage tariff rates—(yeas 12, nays 2)?

4. Does the law require that holders of second or third class (emigrant) tickets, purchased at through fares, based upon or yielding first class proportions for a portion of an interstate haul, shall be given first class accommodations for that portion of the haul?

(At present time immigrant fare from New York to Council Bluffs is based upon an immigrant or third class rate from New York to Chicago, added to a first class rate or proportion from Chicago to Council Bluffs.)

Answer—The common carrier issuing the through ticket from New York designates such ticket as an immigrant ticket. Question referred to the managers to determine whether the law will deal with the class of tickets as a whole or take cognizance of the proportions received by each individual company and require accommodations to be furnished in accordance with the separate proportions received. The answer of the general passenger agents to the questions would be no.

5. Does the law apply to business ticketed from an adjacent foreign

country to an adjacent foreign country passing through the United States or territories?

Answer—No, because it is international business.

6.—Do the provisions of this act apply to traffic from a point in one state to another point in the same state, even though part of the route lies through another state? As, for example, Marinette, Wis., to Florence, Wis., via Chicago & North-Western railway, through Michigan (yeas 5, nays 9).

7. As free passes or tickets to other than railroad employees are prohibited, free passage, free mileage, or other free tickets for interstate hauls issued on various accounts previous to the date on which the law takes effect will then be contrary to law, they should not be accepted for passage and should be recalled.

8. Certificates or orders for return tickets may be honored as coming under the head of excursion business and are exempt; but no contracts should be made to extend beyond April 4, 1887.

9. The question of unexpired contracts involves legal questions, which, we have the opinion, can be better settled by the law department than by us, and is, therefore, submitted to the managers.

10. Must each ticketing line make all its rates an equal rate per mile per classification between all interstate points?

Answer—No.

11. Must all stations be furnished alike with all of same kinds or classes of tickets and rates that may be provided or quoted to or through these stations? For example, if Chicago, Burlington & Quincy railroad provides certain tickets and rates from Chicago to San Francisco, must it do so from all its other stations to all intermediate stations east of San Francisco on all the routes by which it tickets in the first instance?

Answer—No.

12. The form of publishing local ticket and excess baggage tariffs must be a matter of detail to be settled by each company in accordance with its own circumstances.

13. In case of a through rate made on two joint tariffs (Chicago to Kelton, made Chicago to Missouri river and Missouri river to Kelton, for example,) would the filing of joint tariffs (Chicago rate sheet and rate sheet of lines from Missouri river respectively) be sufficient?

Answer—Yes.

14. Where a railroad issues its own through coupon tariff to interstate points, and states on the tickets sold, as per rates therein, that it acts only as agent for transportation beyond its own lines, is such a tariff a joint tariff within the meaning of this section?

Answer—Yes.

15. If an excursion rate were made for a longer haul, would it be concurrently or on the same day required that the same rate, or graded rate, should be made for the shorter haul included in the longer haul?

Answer—No, not obligatory.

16. May summer or winter tourist rates be made for long haul without making the same or correspondingly low rates for shorter hauls on the same line?

Answer—Yes.

17. The matter of permitting the holders of second-class tickets,

purchased at second-class fares, to ride in first-class cars is referred to the managers with the recommendation that second-class fares be revised with a view to their partial or total abolition locally.

18. It is recommended to the general managers that whatever regulations may be adopted for the conduct of interstate passenger business shall also be applied to passenger business within any one state or territory.

The Southern Passenger Associations.

The Southern Passenger Association adopted the following interpretation of the interstate commerce law at a meeting held in New York, March 25, 1887 :

WHAT THE LAW FORBIDS.

1. It forbids special rates, rebates, drawbacks, or any other device whereby a rate can be reduced or increased to work discrimination against any person, or give any undue or unreasonable preference to any person, company, firm, corporation, or locality.

2. It forbids greater compensation for a shorter than for a longer haul over the same line in the same direction under substantially similar circumstances and conditions.

3. It forbids the pooling of passenger earnings.

4. It forbids charging a greater or less compensation than the rates as established and published.

5. It forbids the giving of reduced rates or free transportation to any person or class of persons whatsoever, except as provided in section 22 of the law.

WHAT THE LAW REQUIRES.

6. That all charges for the transportation of passengers and baggage shall be reasonable and just.

7. Like charges shall be made for like and contemporaneous service under substantially similar circumstances and conditions.

8. All reasonable, proper, and equal facilities shall be afforded by carriers for the interchange of traffic between their respective lines and connections.

9. Each common carrier subject to this law shall print, in large type of at least the size of ordinary pica, and keep for public inspection in every depot or station, in such places as may be conveniently inspected, schedules showing the rates of fares for transportation of passengers and property (including baggage), plainly stating the places upon the railroads between which passengers and property will be carried.

10. Ten days' notice of advance in rates shall be given, which notice shall plainly state changes proposed and the time they go into effect; such changes to be shown by printing new schedules, or be plainly indicated upon the schedules in force.

11. Reductions may be made without previous public notice, but when made, notice of the same shall be immediately publicly posted or plainly indicated upon the schedules in force.

12. Every common carrier subject to this law is required to file its

tariffs with the commission, and to promptly notify the commission of all changes made in the tariffs.

13. Copies of all contracts, agreements, or arrangements with other common carriers, and copies of joint tariffs, are required to be filed with the commission. Such joint tariffs shall be made public when directed by the commission.

14. Annual reports shall be rendered as the commission may require.

WHAT THE LAW PERMITS.

15. The law permits different classes of passenger fares, and rates may be as varied as the classes of accommodation.

16. An additional charge may be made for special or unusual service.

17. Variation in charges may be based upon the restricted availability of tickets.

18. Mileage, excursion, or commutation tickets may be issued, provided they be in accordance with the general non-discriminating spirit of the act.

19. Reduced rates may be given to ministers of religion and railway employees.

20. Free transportation may be given to officers and employees of railroads.

21. Excursion rates may be made, in the discretion of railroads, within reasonable limits, provided such rates shall give no undue or unreasonable preference to any particular person, company or locality.

22. The law recognizes just discrimination from the fact that it prohibits unjust discrimination.

ADDITIONAL CONCLUSIONS.

23. Free transportation prohibited by law should be recalled on or before April 4th, 1887.

24. The present local and through passenger fares in the territory of this association are just and reasonable.

25. The term "excursion tickets," as used in section 22, means round-trip tickets sold subject to certain conditions for a journey within a given time to a given point and return.

26. Any company which, with its connivance or consent, permits a "scalper" to sell tickets at less than tariff will be liable the same as if the act was committed by its own agent.

27. A greater amount of baggage checked free for one person than another on the same class of ticket, would be an unjust discrimination.

28. It is not an unreasonable discrimination for fast express trains to stop at large stations only.

29. Railroads are not required to give the same representation in tickets and baggage checks to all connections alike, regardless of the requirements of the traffic.

30. Railroads maintaining through car lines with one connection are not required to maintain similar through car lines with all other connections between the same common points; the great number and variety of different connecting lines between such common points would render such obligation unnecessary, unreasonable and unjust.

31. In order to establish joint tariffs of through fares where two or more connecting railroads are concerned, to the end that all parties to such joint tariff shall be responsible for their proper observance in accordance with law, all parties desiring to participate in through business with members of this association, or with roads connecting therewith by which through fares are established, must indicate the basis upon which such through fares may be made by the issuing company, with the understanding that when such through authorization has been given to the issuing company it can not be withdrawn, changed or modified by any device, except upon like formal notice to the issuing company. In order to secure this formal authorization, a circular shall be issued by the company desiring to participate in joint through fares, giving the proper authority to its connections and inviting similar authority; and that such circulars and replies thereto be filed in the general offices of our respective companies.

M. SLAUGHTER.

Commissioner.

New England Railway Managers.

A meeting of presidents and general managers of the principal New England railways was held in Boston, March 10, to consider the interstate commerce law. There were present 84 officers, representing the following-named thirty-four railroads:

Boston & Albany, Boston & Lowell, Boston & Providence, Boston, Hoosac Tunnel & Western, Central Vermont, Cheshire, Concord, Connecticut & Passumpsic Rivers, Connecticut River, Fitchburg, Hartford & Connecticut Western, Housatonic, Knox & Lincoln, Maine Central, Milford & Woonsocket, Naugatuck, New Brunswick, Newburg Dutchess & Connecticut, New Haven & Derby, New Haven & Northampton, New York & New England, New York City & Northern, New York, New Haven & Hartford, New York, Providence & Boston, Old Colony, Pennsylvania, Portland & Ogdensburg, Providence & Worcester, Providence, Warren & Bristol, Quebec, Ottawa & New England, Air Line, Rome, Watertown & Ogdensburg, South-Eastern, Troy & Boston, and Vermont Valley.

Hon. Charles F. Choate, president of the Old Colony, was elected chairman and Mr. C. S. Mellen, general superintendent of the Boston & Lowell, was elected secretary. After the chair had stated the object of the meeting, vice-president Shinn of the New York & New England moved that a committee of six be appointed to consider the different subjects which are touched upon by the law, and Messrs. Shinn of the New England, Whitmore of the Fitchburg, Furber of the Boston & Maine, Mills of the Boston & Albany, Turner of the Boston & Lowell and Shepard of the New York, New Haven & Hartford, were appointed. The committee reported twelve interrogatories, which appear hereafter.

It was voted to refer the different topics to committees who should carefully consider the several propositions and report upon them at an adjourned meeting.

The first section was referred to a committee of presidents consisting of Messrs. George C. Lord of the Boston & Maine, A. B. Harris of the Passumpsic, W. A. Russell of the Cheshire, Edwin Morey of the Boston & Lowell and J. Gregory Smith of the Central Vermont.

The second section was referred to a committee of general passenger agents consisting of Messrs. A. C. Kendall of the New York & New England, George L. Connor of the Old Colony, O. H. Briggs of the New

York, Providence & Boston, J. R. Watson of the Fitchburg, and S. W. Cummings of the Central Vermont.

The third, fourth and sixth sections were referred to a committee of general freight agents, consisting of Messrs. Charles Rockwell of the New York, New Haven & Hartford, H. E. Howard of the Vermont Valley, W. J. C. Kenney of the Boston & Maine, H. B. Chapin of the Boston & Albany, and C. L. Hartwell of the Fitchburg.

The fifth, seventh, eighth, ninth, tenth and eleventh sections were referred to the committee of presidents.

The twelfth section was referred to a committee consisting of Messrs. G. H. Williams of the New York & New England, S. G. Putnam of the Old Colony, W. F. Berry of the Boston & Maine, W. H. Morrill of the Boston & Providence, C. N. Yeamens of the New Haven & Northampton, H. N. Turner of the Boston & Lowell, J. M. Williams of the New York, Providence & Boston, John Porteus of the Central Vermont, H. C. Folsom of the Passumpsic, W. S. Eaton of the Maine Central and Samuel Barrett of the Concord.

At the adjourned meeting, March 17, the committee of presidents, to which was referred several questions propounded at the previous meeting, presented the following report upon them :

REPORT OF COMMITTEE OF PRESIDENTS.

1. Free passes — Does section 2, taken in connection with section 22, prohibit the issuance of free passes, except for the officers and employees of railroad companies ?

Ans. — In answer to this question the committee voted " that the usual courtesies heretofore extended to the families of the officers and employees of railroad companies are not prohibited and should be continued, but that, in the opinion of the committee, it would be in contravention of the spirit of sections 2 and 22 of the interstate commerce law to issue free passes, except as above, and they therefore recommend conformity to this interpretation of the law."

As questions 5, 7, 9, 10 and 11 were of such a nature that the committee wished for legal advice before making a report, they voted to submit them to Hon. Richard Olney, A. A. Strout and George A. Torrey, for their opinion, said gentlemen being respectively counsel for the Boston & Maine, Boston & Lowell, and Fitchburg railroads. After receiving their report, and after a conference with them, it was voted to adopt the language of their answers to the questions in making a report to the convention.

5. Are contracts which have been made with shippers for transportation of freight which have not expired prior to April 5, rendered void by the interstate commerce law ?

Ans. — All provisions in contracts existing on the 5th day of April, which are contrary to the interstate commerce law, become void so far as they are executory.

7. Are export drawbacks prohibited by law ?

Ans. — Export drawbacks are not prohibited, provided they do not in other respects infringe the provisions of the interstate commerce law.

8. Does the proportion of a through rate, which a railroad receives under a joint tariff, fix the local charge between the same points ?

Ans.—The proportion of a through rate, which a railroad receives under a joint tariff, has no relation to or connection with the compensation it is entitled to charge for transportation on its own line.

9. Can tickets to scholars be sold at less rates than to other children of the same age?

Ans.—The law does not authorize the sale of tickets to scholars at rates lower than those charged to other children of the same age.

10. What constitutes an excursion ticket under the law?

Ans.—An excursion ticket means a round trip ticket sold at a reduced rate to any person who, for a special purpose or at a particular season, desired to make a special journey within a given time to a given point and return.

11. Does the law apply to the express business as a matter for which the railroad companies are responsible to the public?

Ans. — Express companies are common carriers and subject to the provisions of this act. A violation of its provisions by the express companies does not render the railroad company responsible, unless the latter has knowingly participated therein.

The answers to the above questions naturally divide themselves into two parts. First, What could or could not be done under the law? Second, What uniform principles in conducting their business it was best for all railroads at the present time to adopt? The discussion was confined to the provisions of the law itself. As a matter of policy the committee would recommend that railroad companies, in conducting their business, should not confine themselves to the distinction made in the law between state and interstate commerce, but whatever is found best or expedient to do in regard to interstate commerce, should also be applied to commerce confined entirely to one state, and, as far as possible, the practice, under the same conditions and circumstances, should be the same by all railroads.

It was voted that the recommendation of the committee in relation to question 1 be adopted, and that no passes be issued for interstate business except those authorized by the law as explained by the committee, and that all outstanding passes in violation of the act as interpreted by the committee, be withdrawn. After discussion it was also voted that the whole matter of complimentary state passes be left to the wise discretion of each railroad to decide for itself, but that, in the opinion of this convention, any passes given for the purpose of influencing commerce would be in contravention of the spirit of the interstate commerce law. It was also voted to adopt the committee's report in relation to questions 5, 7, 8, 9, 10 and 11.

REPORT OF GENERAL PASSENGER AGENTS' COMMITTEE.

The committee of passenger agents, to whom was referred the second question, in regard to commissions and baggage, submitted the following report:

“Commissions—Your committee have carefully considered section 7 in the proceedings of the joint committee meeting held in New York,

March 4, 1887, and it is the sense of this committee that, while the act of paying commissions is not a violation of the law, but the payment of a commission may result in a violation, therefore we unanimously recommend that the payment of commissions for the sale of passenger tickets to any agent, firm, broker, scalper or other person be absolutely abolished by the New England roads after March 31, 1887.

"Baggage—The subject of baggage (section 6, joint committee) referred to this committee for consideration is as follows:

"It has been the custom of railway companies to transport a certain amount of personal baggage, in baggage cars provided for this purpose on passenger trains, for which no separate charge has heretofore been made. The custom has varied somewhat in different sections of the country and for different classes of people. To the end that a uniform rate may be adopted, we recommend that the rule for free transportation of personal baggage be as follows, and that no greater excess be allowed to go free, or at different rates than are named in this general rule: (a) There may be checked free on each full first or second class ticket 150 pounds of baggage; on each half first or second class ticket, 75 pounds; on each full emigrant ticket, 100 pounds. (b) Baggage of first and second class passengers weighing in excess of the free allowance thus authorized shall be subject to a charge of not less than 12 per cent. of the lowest unlimited first-class fare; provided, however, that no less charge than 25 cents be made in any case. (c) No single piece of baggage weighing more than 250 pounds shall be checked as baggage by any of these lines except for ship immigrants. We recommend that this concession shall apply only to the personal baggage of travelers, as covered and included in decisions at common law, to-wit, the personal effects of the traveler, which may include his wearing apparel, worn jewelry, a book for reading on his journey, a watch, or other personal effects which are not merchandise, and which may vary according to the condition in life of the passenger and the length of his journey, and that no commercial luggage, musical instruments, organs, pianos, donkeys, horses or theatrical scenery be transported as free baggage. We recommend that all excess baggage, order books and permits be at once withdrawn from sale.

"Your committee recommend the adoption of the above with the following exception: That commercial travelers' baggage be checked under the same conditions as to weight as that of other passengers, with the exception that railroad companies shall not be held responsible in the event of loss and damage except for personal effects as enumerated above. We would respectfully suggest that for the sake of uniformity in the transaction of business of New England roads that the above recommendation relating to interstate business be applied to local state traffic."

It was voted to adopt the report of the committee in relation to commissions and baggage, and also that for the sake of uniformity the above recommendation relative to interstate business be applied to local state traffic.

REPORT OF GENERAL FREIGHT AGENTS' COMMITTEE.

The committee of general freight agents to whom was referred the third, fourth and sixth questions of the report presented the following report:

"3. Shall a charge be made for detention of cars where the duty of unloading devolves upon the consignees?

"It is the sense of the committee that a reasonable and just charge should be made for the detention of cars where the duty of unloading devolves upon the consignees.

"4. Shall freight charges be collected at once on delivery of goods in all cases?

"It is the sense of the committee that this is a question which should not be decided by the traffic department of the railroads, but should be settled by the president and board of directors of the different roads.

"Shall freight be stopped off short of its billed destination, or changed in transit from one destination to the other? And in connection with this, shall grain in transit be stopped off for milling and a mill product sent forward on the same way bill?

"Three members of the committee vote that freight may be stopped off short of its billed destination or changed in transit from one destination to another, subject to a reasonable charge for the service, and two members of the committee vote that freight may be stopped off short of its billed destination, or changed in transit from one destination to another, where the through rate and the divisions of the through rate are identical. The committee's answer to the second section of question 6 is that it is the sense of the committee that grain in transit should not be stopped for milling and a mill product be sent forward on the same way-bill; but the committee thinks that special rates may be made for carrying the mill products from the mill to points on the line of the road which brought the grain to the mill."

It was voted to adopt the recommendation of the committee in regard to the third and fourth questions of the report, and it was voted, after some discussion of the sixth question of the report, that "freight in carloads which a railroad company receives from connecting roads may be stopped off short of its billed destination, or diverted to another destination on the line of that road upon which the original destination is located; always provided that the through rate and the divisions thereof to the new destination are identical with those on the original way-bill, and provided also that notice of the desired change in destination be given by the owner to the agent before the car has reached the road upon which the change in destination is to be made."

The committee to whom was referred the question of a uniform classification of local freight rates reported that the variations in New England are confined to special articles, such as lumber, brick, dry goods, carriages, etc., and that if time was given, and a full meeting with New England roads be had, the matter could be satisfactorily adjusted. The committee was also of the opinion that the adoption of rates fixed by the trunk lines for local business would, if applied in New England, result in a serious loss of revenue.

Upon this report it was voted that it is desirable for the New Eng-

land roads to adopt a uniform classification for their local and interchangeable freight business, and that the subject of a uniform classification for local and interchangeable business of New England roads be referred to a committee consisting of one representative for each road here represented, with power to act. A committee was appointed in accordance with the vote.

And the meeting adjourned sine die.

APPLICATION FOR RELIEF FROM SECTION FOUR.

ARGUMENT OF MR. MILTON H. SMITH, ON BEHALF OF THE SOUTHERN RAILWAY AND STEAMSHIP ASSOCIATION, SUBMITTED TO THE INTER-STATE COMMERCE COMMISSION AT WASHINGTON, APRIL 2, 1887.

Mr. Chairman and Gentlemen of the Commission:

We appear before you as a committee representing the Southern Railway and Steamship Association.

The Southern Railway and Steamship Association is one of a number of similar organizations existing throughout the country, that owe their origin to the rapid development of the transportation systems and methods that has taken place in this country during the past twenty years.

For nearly thirty years from the beginning of the construction of railroads in the United States, little or no attempt was made at federation. Nearly all the railroads constructed during that period were local; and even where two or more companies constructed railroads that connected, and together formed a continuous line, they continued to be operated as local railroads, each company issuing bills of lading to points on its own line at local rates only, both freight and passengers being transferred at termini.

For many years forwarding and commission merchants continued to transact business in the same manner as when the transportation of the country was by water—that is, a shipment from an interior point in Ohio, say Springfield, destined to a point south, say Bowling Green, Ky., was shipped locally to Cincinnati, consigned to a forwarding and commission merchant, who received the same, paid the freight, transferred the shipment through the city, and delivered it to the Mail line boats plying between Cincinnati and Louisville, shipped it to another forwarding and commission merchant at Louisville, who in turn receipted for the property, paid charges accruing thereon up to that point, attended to the transfer to the depot of the Louisville and Nashville Railroad Company, and shipped the property to destination, collecting from the railroad company as advances the accrued charges, including a liberal compensation for receiving and forwarding, with a fair margin of profit in the item of drayage.

These conditions resulted in the formation of fast-freight line organizations by enterprising persons who saw the necessity for through arrangements, whereby shippers could forward property to distant points over the lines of a number of carriers under a contract for a through rate and continuous carriage. These fast-freight lines entered into

agreements with the different carriers, whereby, in consideration of assuming the responsibilities of through contracts, through carriage, and furnishing through cars, they secured reduced rates of transportation on car-load quantities, occupying the position of middle men between the various carriers and the shippers. As this system developed, and the rates of transportation declined, the profits of the fast-freight lines were found to be excessive; and as it became apparent that the carriers could by combination furnish facilities nearly or quite equal to those of the fast freight lines, complaint arose that such organizations were an unnecessary tax upon the revenue of the carriers. No such organization has ever existed in the territory served by the carriers—members of the Southern Railway and Steamship Association.

In time it became apparent that the carriers could eliminate some of the charges imposed upon traffic under the methods just described by agreeing to become parties to through arrangements, and, by one carrier receiving the property from the shipper and consigning it directly to a connecting carrier to be carried to destination, or to be delivered to another connecting carrier, could perform the service theretofore performed by the forwarding and commission merchant or by the fast-freight lines. This could be done with little or no increased expense to the carrier, since the same facilities that were necessary for the carrier to do business with the forwarding and commission merchants could be used in receiving property from and delivering it to connecting carriers. Even after these methods were to some extent adopted, carriers in many instances, while guaranteeing through rates which were the sums of the locals, only receipted for property to the ends of their railroads, and still continued to transfer property from car to car, or by drays at termini, each company receiving its local rates.

This, for a time, created a class of middlemen, which may be correctly described as "freight brokers." They were generally enterprising men, who familiarized themselves with the rates of the various carriers; and by manipulating them were able to contract with shippers at lower rates than the shippers, without the special knowledge of rates, could secure for themselves. By reshipping at less rates they secured a margin that would remunerate them for their time and enterprise. As an illustration, a person such as we have described, located at Cincinnati, would contract with manufacturers in the interior of Ohio, guaranteeing a through rate from the manufactory to destination; have the property consigned to him at Cincinnati, pay charges, reship at rates he had secured, and collect from the carrier the difference between rates thus secured and the contract rate made between himself and the manufacturer. As the methods of the carrier rapidly improved, this class of middle-men soon became extinct.

As two or more carriers entered into arrangements for continuous carriage over their various railroads, the joint business rendered frequent communication and personal conferences necessary. This developed traffic agents, who devoted much or most of their time to what became known as "through traffic," in contradistinction to "local traffic," or traffic between stations on the line of a single carrier. As the system gradually extended, and the number of carriers, parties to through arrangements increased, the necessity of some organization for

the transaction of the joint business was developed, and this resulted in the formation of associations.

The Southern Railway and Steamship Association may be said to have come into existence in 1875, although it was the successor of similar organizations less comprehensive. The objects of the Association are partially set forth by the following extract from the preamble of the agreement submitted herewith:

"That whereas, The establishment and maintenance of tariffs of uniform rates and the prevention of unjust discrimination, such as necessarily arises from the irregular and fluctuating rates which inevitably attend the separate and independent action of transportation lines, is important for the protection of the public; and

"Whereas, It is deemed to be to the mutual advantage of the public and the transportation companies that business in which they have a common interest should be so conducted as to secure a proper correlation of rates such as will protect the interest of competing markets without unjust discriminations in favor of or against any city or section; and

"Whereas, These objects can be attained only by co-operation on the part of the various transportation lines engaged in the traffic of the territory south of the Potomac and Ohio rivers and east of the Mississippi river; and

"Whereas, Such co-operation is absolutely necessary to a strict compliance with the requirements of the act of Congress, entitled 'An Act to Regulate Commerce.'

"Now, therefore, in order to secure such co-operation among the said transportation lines, by providing means for the prompt adjustment of the differences which may arise between them; by placing all of their traffic common to two or more companies, under the control of officers jointly elected, and by the general conduct of the same under well-defined rules and regulations which will insure the maintenance of rates, it is mutually agreed," etc.

It will be seen that the agreement submitted herewith is to take effect on the 1st of April. It is, however, simply a modification of an agreement which has been in effect for several years, the principal change being the elimination of such portions as provided for the allotment or division of traffic which is specifically prohibited in section 5 of "An Act to Regulate Commerce."

Most of the common carriers in the territory south of the Potomac and Ohio and east of the Mississippi rivers are parties to the agreement, the most important exception being the Chesapeake and Ohio Railway Company, which, though located south of the Ohio and Potomac rivers, takes traffic in competition with the trunk lines and their connections. The terms and conditions upon which it interchanges traffic with members of the Southern Railway and Steamship Association are similar to those upon which the trunk lines and their connections interchange traffic with them.

From the foregoing it will be seen that we represent the carriers that furnish transportation facilities for a large part of the State of Virginia, practically all of North Carolina, South Carolina, Georgia, Alabama, and Tennessee, and a part of Kentucky, Mississippi, Louisiana, and Florida, and the traffic interchanged between those States and other parts of the country.

The results obtained by the Southern Railway and Steamship Association, like those of most other similar associations, are mainly the simplification of negotiations between the numerous parties to the arrangements for interchanging traffic. As will be seen by reading the agreement, the parties thereto delegate but little authority to the Association, and where this is done it is of small moment in practice, for the reason that such voluntary agreements, like those of nearly all similar

commercial organizations, can not be legally enforced, and are complied with only in so far as the representatives of the various corporations deem that the interests they represent will be promoted thereby, or as their personal whims or inclinations may dictate. These associations are of like nature with the various trade organizations, such as boards of trade, chambers of commerce, manufacturers associations, and so on.

An examination of a map of the United States shows that the traffic conditions of the territory served by the carriers here represented differ materially from those of the larger portion of the remainder of the United States. Commencing at Cumberland, Md., thence down the Potomac and Chesapeake to the Atlantic, thence following the coast to New Orleans, and the Mississippi and Ohio rivers to Pittsburgh, Pa., the entire territory is practically surrounded by navigable waters. In addition to being thus surrounded the territory is penetrated by navigable rivers emptying into the ocean and the gulf, and by the various tributaries of the Ohio and the Mississippi. There are numerous points that are competitive between rail and water carriers along and near the Atlantic coast. The James River is navigable to Richmond, Va. Boats ply the Savannah river with more or less regularity as far inward as Augusta, Ga. They ply the Chattahoochee as far as Columbus, Ga. The Alabama and its tributaries are navigable from Mobile to Montgomery, Ala., and to Aberdeen, Miss. The Tennessee is navigable from Paducah, Ky., to Florence, Ala., and from Decatur, Ala., to Chattanooga, Tenn., and during certain seasons of the year above Chattanooga as far as Knoxville. The Government has for years been engaged in constructing a canal around Muscle Shoals. The work is nearly completed, and the Tennessee will soon be navigable between Paducah and Chattanooga. The Cumberland is navigable for a large portion of the year between Smithland, Ky., and Somerset, Ky., the crossing of the Cincinnati Southern railroad. The Green and Barren rivers are navigable between Evansville and Bowling Green. The Kentucky river is navigable between Carrollton, at its mouth, and Oregon, Ky. There are a number of smaller streams which are navigable for small craft during a portion of the year.

For many years the Government has been spending large sums of money to improve the navigability of these streams by building locks and dams, wing-dams, deepening channels, and erecting and maintaining lights and signals, thus cheapening the cost, lessening the risk, and otherwise increasing the facilities for navigating all the inland waters of this territory. Nearly or quite all of the carriers navigating these streams are engaged to a greater or less extent in interstate commerce.

The more important cities of this territory, such as Cincinnati, Ohio; Louisville, Ky.; St. Louis, Mo.; Nashville, Tenn.; Memphis, Tenn.; Montgomery, Ala.; Selma, Ala.; Mobile, Ala.; New Orleans, La.; Pensacola, Fla.; Savannah, Ga.; Charleston, S. C.; Augusta, Ga.; Wilmington, N. C.; Richmond, Va.; Vicksburg, Miss., were commercial centers, where traffic with the surrounding country was interchanged, before railroads were built to them. They became commercial centers by virtue of natural location and of the facilities they enjoyed, and do still enjoy, from water transportation. When the railroads reached these points they found the circumstances and conditions, by

reason of meeting with water competition, entirely dissimilar, the volume of traffic concentrating at such points being many times greater than at intermediate stations, and the value of the transportation to the shipper already fixed by the water carriers.

As would be expected, the attempt to construct railroads throughout this territory started from points on existing water-transportation lines. Among the first to be built was the South Carolina railroad, Charleston to Augusta; soon after the road from Vicksburgh to Jackson, Miss.; then from Savannah to Macon; Augusta to Atlanta; Atlanta to Chattanooga; Memphis to Chattanooga; Chattanooga to Nashville; Louisville to Nashville; Memphis in the direction of Louisville; New Orleans to Jackson, Miss.; Atlanta to West Point; West Point to Montgomery; Montgomery in the direction of Pensacola; Pensacola in the direction of Montgomery; Mobile northward; Dalton to Knoxville; Norfolk in the direction of Lynchburg, etc. As the railroads were constructed from water lines towards the interior, tariffs for the transportation of property were, at first, based mainly upon the distance. By this is not meant that in any case was the same rate per ton per mile basis adopted for the transportation of property for different distances, but that, as the distance increased, the rates were gradually increased. The long and short haul problem, which has for some years past vexed legislators and taxed the ingenuity of traffic managers, had not then arisen. In those days it was not supposed that railroads could, under any circumstances, compete with water transportation. Less than thirty years ago, some time after the completion of the several railroads which together form a continuous rail line from Nashville, Tenn., to Savannah, Ga., an enterprising young man, then and now a citizen of Tennessee, with a slight practical experience in river transportation, went to Savannah and presented to the president of the great Central Railroad of Georgia—a road 190 miles long—a plan to secure the transportation of wheat from Tennessee to New York via Savannah. The great magnate, while good-naturedly assenting to the proposed arrangement, bluntly said that he never expected to see or hear of him or the wheat again. He and the chief officers of the other railroads and the steamship lines over which the property was carried were greatly surprised when the effort resulted in what was then deemed a large movement of the product of Tennessee.

It was also about this time that the superintendent of the Western and Atlantic road, a road constructed, owned, and operated by the State of Georgia, in his annual report to the Governor, referred to the fact that during the preceding year, when there had been almost a total failure of the corn crop throughout the State, a large quantity of corn had been transported from Tennessee, and had thus been the means of preventing much suffering and loss to the citizens of Georgia; offering this as a remarkable fact to prove the wisdom of the State in investing a large sum of money in what had before that proved to be an unprofitable enterprise.

The construction of railroads to interior points has greatly facilitated interchange of commodities between different sections of the country, and has added to the comfort and luxury of the people. Before the construction of railroads, communities located in the interior

produced but comparatively few articles that would bear the excessive cost of transportation by the facilities then in use. Such articles as wool and feathers, of which the relative value as compared with weight is great, would bear transportation for quite long distances to the nearest point favored with water transportation. Corn and such like articles could only be disposed of for consumption in the neighborhood, or be converted into a product that would increase its value as compared with its bulk and weight, such as whiskey, live stock, etc. The quantity of merchandise used in such communities was also greatly restricted by the cost of transportation. The result was that these communities lived mainly within themselves—that is, they produced much of what they consumed and consumed most of what they produced.

When railroad companies began to extend their lines into the interior, their rates of transportation were adjusted within their charter limits to meet the existing condition of things. For the first few miles they were unable to compete with the transportation by animal power. But as lines were extended the limits prescribed by charters produced rates that were less than the cost of animal transportation. And as lines were still farther extended it became evident that the maximum charter rates, if insisted upon, would prohibit the transportation of some articles. In other words, rates so fixed were more than the traffic would bear. If the rate on corn was made as great as the rate on wheat, the corn could not be shipped, and was therefore converted by feeding to stock or by manufacturing whiskey. The natural consequence was that to encourage the shipment of corn the rate was reduced. In the same way the limit of the rate for the transportation of wheat was reached. So in the case of other articles of which the value as compared with the bulk and weight is relatively small. Thus railroad managers learned their first lesson in promoting traffic. Many articles, the value of which as compared with the bulk is relatively great, such as dry goods, boots and shoes, drugs, etc., have seldom or never been charged what such traffic will bear.

From the limitations herein described, managers of railroads first discovered the fact which involves a paradox—that traffic can be transported and yield a profit at a rate that is less than the average cost: that *additional* traffic secured at a rate that yields revenue in excess of the *additional cost* of carriage, though less than the average cost, produces a profit.

I have said that managers learned this, and it is true, so far as adopting in practice rates so based; although, with a few exceptions, it is too much to say that they clearly comprehended the fact. Many of them still do not so clearly comprehend it as to enable them to make an intelligent explanation of it. Only when rail lines undertook to compete with water lines was this important economic fact extensively put in practice.

As the railroads starting from opposite points on the water-bound territory were extended into the interior, the adoption of rates of transportation that were not less for the longer than for the shorter distance resulted in an increase in the rates of transportation. One line starting from Charleston and extending in the direction of Memphis, and another starting from Memphis and extending via Chattanooga in the direction

of Charleston, the maximum rates from the basing points, Charleston and Memphis, were reached at the meeting point, say somewhere in the State of Georgia. This basis of adjusting rates was and is still beyond criticism so long as the principle obtains that the rate for the longer distance shall not, under any circumstances, be less than for the shorter distance, and it was acquiesced in by all concerned until the various railroads entered into the arrangements heretofore referred to, whereby they undertook to contract for continuous carriage between distant points, over a number of railroads, at a specific rate, and to compete with water carriers.

When railroads undertook to transport property from Charleston to Memphis, it was found that it could be done only under limitations not theretofore encountered; that the compensation for transporting property was limited to its value to the owner, and that the value was not in this case what the traffic could bear, but what competing carriers would transport it for.

Evidently, at this stage, the net revenue derived from the transportation of property to and from intermediate points, was many times greater than could possibly be obtained for the transportation of like property between Charleston and Memphis. Therefore, the interests of the carrier demanded that the transportation of property between Charleston and Memphis be not undertaken, or that a less rate for the longer than for the shorter distance should be accepted. This principle also had to be applied to a certain extent to a limited number of intermediate points. The maximum rate that could be secured for the transportation of property from Charleston to intermediate local stations near Memphis was limited to the value of transportation from Charleston to Memphis plus the rate from Memphis to those stations, which, on many classes of freight, would be less than to stations a greater distance from Memphis. From such conditions was evolved the basis upon which rates for the transportation of property in the territory represented are, with few exceptions, now fixed.

For the Louisville and Nashville Railroad Company I claim that the present rates for the transportation of property are not only just and reasonable, but are adjusted, with possible exceptions, in accordance with the requirements of the "Act to Regulate Commerce."

I believe that the "Act to Regulate Commerce," in prohibiting carriers from charging or receiving "any greater compensation, in the aggregate, for the transportation of passengers, or of like kind of property, *under substantially similar circumstances and conditions*, for a shorter than for a longer distance," authorizes carriers to charge or receive greater compensation for the transportation of passengers or of like kind of property for a shorter than for a longer distance, *under circumstances and conditions that are substantially dissimilar*, and that your Commission can only authorize carriers to charge less for longer than for shorter distances, for the transportation of passengers or of like kind of property upon application of carriers who may desire so to do, where the circumstances and conditions are substantially similar.

Other representatives of large corporations who are associated with me in this committee hold similar view. Our views are more clearly stated by MR. ALBERT FINK, from whom I take the liberty to quote:

[MR. SMITH then proceeds to quote from the article of MR. FINK, which is given in full in this volume, commencing at page 143, giving MR. FINK's construction of section 4 of the law.—EDITORS.]

Personally I am confident that the foregoing is the correct interpretation of the fourth section of the act, and that it will be finally so decided.

It is not necessary for me to call your attention to the fact that if your Commission should so construe the law it would not only give instant relief to the commerce of the country, which, owing to the unwise, unjustifiable, and, under the circumstances, indefensible construction of section four of the act by the managers of a large proportion of the railroads throughout the country, is practically suspended; but you would relieve yourselves of innumerable complications and of great responsibilities that, in my opinion, you are not called upon to assume. Under the "Act to Regulate Commerce," as representing common carriers, we are not authorized to bring any matter to the attention of your Commission except to ask authority to charge less for the longer than for the shorter distance for the transportation of property under substantially similar circumstances and conditions. We are, therefore, debarred from applying to you for your construction of the fourth section of the act, and possibly we are not justified under the circumstances in bringing the matter to your attention.

Others, also representing large corporations, hold opposite views, construing the act to absolutely prohibit "any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of property * * * for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance," under any and all conditions, unless specially authorized by your Commission.

While I, as representing the Louisville and Nashville Railroad Company, firmly believe that the act does not require the abandonment of the present basis of adjusting rates for the transportation of property throughout the territory now under consideration, which has been in effect for years, and upon which the business in this territory and with other parts of the country is based, and which may be said to have given general satisfaction, and which has constantly furnished increased facilities at a constantly decreasing cost to the various communities, yet I am practically forced, by what I deem the unwise and unwarranted action of connecting carriers, to adopt the same course as those holding opposite views.

I have been connected with Southern railroads since 1860. For twenty years I have been engaged in formulating the system whereby through rates for the transportation of property were made between points on the Louisville and Nashville railroad and all parts of the country. It has been a source of pride with me that shippers of nearly all classes of property could secure through bills of lading between any point on the Louisville and Nashville railroad and nearly every point in the United States, and on some classes of freight to some points in Europe. Many years ago, after much labor, I succeeded in securing data that enabled the Louisville and Nashville Railroad Company to guarantee the rates on cotton from all points on or reached via its lines to nearly

every cotton mill in New York, New England and Canada. Every transportation line in the Southern territory has for years past been guaranteeing rates in the same way.

This is a business matter and does not call for any exhibition of feeling, yet I confess to a feeling of discouragement and annoyance when I see the labor of years thrust aside, as it has been, by connecting carriers withdrawing all rates for the interchange of traffic. I contend that connecting carriers were not justified in taking such action.

We are aware that the trunk lines and most of their Western connections have prepared and put in effect an adjustment of rates from the first of April, based on not charging less for the longer than for the shorter distance. Managers of railroads are human, and in this instance they have been prompted to take uniform action from different motives. Many of them believe that a strict construction of the law in this regard will on the whole promote the interests they represent. Others are in fear of a multiplicity of lawsuits with corresponding penalties. Others are compelled to do so by the action of competing lines. Others, comparatively few it is to be hoped, believe such a construction will seriously cripple competing lines without greatly injuring the interests they represent. This is an uncharitable view, but there is evidence going to show that long and continued strife for traffic engenders a feeling of animosity in some characters that causes the individual to lose sight of nearly everything except that that will injure a rival corporation.

However, the competitive conditions north of the Ohio and Potomac rivers are wholly different from those in the territory represented by your petitioners.

The practice of adjusting rates so as to not charge more for the longer than for the shorter distance has been in effect upon the trunk lines for many years. The New York Central Railroad, paralleling the Hudson River, the Erie Canal, and with its connections west of Buffalo the lakes, has water competition the whole length of its line. Evidently these carriers could not well exact a higher rate for the shorter than for the longer distance, because the competitive circumstances and conditions are substantially similar at most if not all the points on the entire line. A higher rate from Toledo, or from Sandusky, or from Cleveland, to the sea-board, than from Chicago to the sea-board, could not well be charged, as the value of the transportation, or the charge by the water lines, is not greater for the shorter than for the longer distance. The Pennsylvania Railroad Company adopted this basis at least twenty-five years ago, and its action forced competing lines to the same course. Therefore, revising the rates of these lines to adjust them in accordance with the prohibition against charging more for the shorter than for the longer distance involves little or no change, so far as their lines and immediate connections are concerned. It will be readily seen that a corporation like the Pennsylvania Railroad Company, operating nearly five thousand miles of railroad in the State of Pennsylvania, the distance from the nearest sea-board point to the extreme western limit of the State being not less than 350 miles, and over which nearly all traffic from the West must pass, can with its immense traffic afford to adopt a basis that secures to it the long haul upon nearly all competitive traffic. But when small independent companies with short roads and light traf-

fic are forced to adopt the same basis, the result must necessarily be disastrous.

A retrospective view proves this to have been the result in many cases. I venture to say that, with but one or two exceptions, not a railroad in the States of Ohio, Indiana, or Illinois has been able to escape bankruptcy, except it has been carried by or become part of one of the trunk lines, or some great Western railroad corporation. Several of these small railroads have been through bankruptcy more than once.

The annual reports of the Pennsylvania Railroad Company for a number of years showed that the operations of the roads west of Pittsburgh and Erie controlled by that corporation resulted in a loss; while the traffic secured from those roads to the lines east of Pittsburgh and Erie, may have, and doubtless did, yield a revenue that has rendered the operation of those roads as a whole, profitable to that corporation.

What is known as the Bee Line, running from Cleveland to Columbus, Cincinnati, Indianapolis, and St. Louis, which was forced by its competitors to adopt the policy of the trunk lines, although running through a magnificent and thickly-populated country, yielding an immense traffic, has, because debarred from securing local rates upon any of its traffic, avoided bankruptcy with the greatest difficulty, and it is to-day struggling to meet a large debt. The average rate per ton per mile received by that company for the transportation of property has been less than that of any other railroad in the country—less than that of any of the trunk lines who have so selfishly thrust this policy upon their Western connections, and by so doing have inflicted losses amounting to millions of dollars upon the original investors in Western railroads. The control of this road is believed to be held by the interests that control the New York Central. Very likely, the interest which may have been acquired at a price less than it cost the original investors, is indirectly remunerative; since by the adjustment of rates the traffic originating at stations on this line, which ought in justice to yield a local revenue to the C. C. C. & I. Co. is secured to the controlling line. This adjustment of rates amounts to a practical prohibition against the movement of all articles produced at intermediate stations on the east and west lines to the south. From the foregoing, I think, it will be seen how the policy of adjusting rates so that the charge for a longer distance to and from competitive points shall in no case be less than to and from intermediate local stations, may promote the interests of the great trunk lines, and at the same time be disastrous to the interests of the smaller corporations; and how such a policy may tend to concentrate the commerce of the country at eastern sea-board cities, while at the same time it has a tendency to retard the prosperity of the West and the South.

As representing the Louisville and Nashville Railroad Company, I can speak with confidence as to the disastrous results from the enforced adjustment of rates upon the basis of not less for the longer than for the shorter distance. The Louisville and Nashville Railroad Company is the owner of a railroad extending across the State of Illinois from East St. Louis, Ill., to Evansville, Ind., with a branch from McLeansboro to Shawneetown, Ill. This property was acquired by purchase at a bankrupt sale. During the fiscal year ending June, 1886, the results on this railroad were as follows:

Gross earnings.....	\$837,104 71
Operating expenses, interest, and taxes.....	1,019,517 08
Loss.....	\$182,412 37

This result is wholly due to the low rates which circumstances and conditions compel the management to accept for the transportation of local traffic, such rates being partly due to the action of competing lines in adjusting rates, as hereinbefore described, and partly due to the regulation of rates by the State of Illinois through its railroad commission, which absolutely prohibits charging or receiving less for the longer than for the shorter distance under any circumstances. As an illustration of the ill effects of the prohibition by the State of Illinois, the railroad company makes no attempt to compete with the water lines for the transportation of property between Shawneetown, Ill., and East St. Louis and St. Louis. Consequently, the traffic over forty miles of railroad, from Shawneetown to McLeansboro', is so light that one mixed passenger and freight train each way, six days in the week, is all that is operated, and is really more than the traffic requires. Were the restrictions against charging more for the shorter than for the longer distance removed, it is probable that a traffic in lumber and other heavy articles might be developed that would enable the company to furnish increased facilities and add something to the net earnings.

Fortunately, perhaps, the earnings of the Southern roads from local traffic are so many times greater than from competitive traffic, and the competitive points are so widely separated, that the effort of the trunk lines and their Western connections to force their adjustment of rates upon the Southern roads must necessarily fail.

I do not believe there is any necessity for disturbing the commerce of that portion of the country at least which lies south of the Ohio and Potomac rivers and east of the Mississippi. I do believe that the law was enacted to secure just and reasonable rates and to prevent unjust discrimination. I do not believe that it was intended to disturb the existing friendly and mutually favorable and just commercial conditions that exist between the carriers and the shippers, or that it was intended to financially embarrass either carriers or commercial communities; and I do not believe that it will so result, if the carriers of the country intelligently construe its provisions and make an earnest and honest endeavor to comply therewith. If they do this I believe they will receive the support of your Commission and of the courts. If any of the requirements of the act are of doubtful meaning no action should be taken until the meaning is made clear, avoiding sudden and radical changes which tend to disturb the commerce of the country.

Ours is not a despotic Government. If our legislators, under our cumbersome methods of legislation, in endeavoring to legislate upon a wholly new subject—for I believe this is the first attempt of Congress to legislate on this subject—have enacted a law which is evidently a piece of patchwork, incoherent in its terms, and subject to different interpretations, and providing for its becoming effective simultaneously with the time when your Commission, created to administer it, is authorized to act, the carriers were not justified in placing an illiberal construction upon it, and arbitrarily taking action that creates a disturbance in the

commerce of the country and threatens a general commercial disaster. Assuredly there is not, and there never has been, any danger of carriers being punished for violating a law whose provisions are not clearly understood. They will not be punished except they wilfully violate the law after its provisions have been construed by the proper authorities.

As heretofore stated, the views of some of the members of this committee do not coincide with mine; but for the reasons given we are all agreed upon the necessity of asking your Commission to exercise the authority delegated to you by section 4 of the act, in that we "be authorized to charge less for longer than for shorter distances for the transportation of * * * property."

For convenience, to lighten the labor, and to facilitate progress, we will divide the questions to be submitted into six classes.

First. That we "be authorized to charge less for longer than for shorter distances for the transportation of * * * property" where the property transported between the longer distances is secured in competition with the water carriers not subject to the provisions of the act.

There are many instances of this class of competition. It exists between Boston, New York, Philadelphia, Baltimore and Richmond, Wilmington, Savannah, Mobile, New Orleans, Montgomery, Selma, Memphis, etc. Between Louisville and Cincinnati, between Cincinnati, Louisville, and Owensboro, Ky.; Evansville, Ind.; Memphis, Tenn.; New Orleans, La.; Mobile, Ala.; Montgomery, Ala.; Selma, Ala., etc.

Second. That we "be authorized to charge less for longer than for shorter distances for the transportation of * * * property" where the traffic for the longer distance is taken in competition between rail lines and rail and water lines which may or may not be subject to the provisions of the act.

There are numerous instances of this kind of competition. For example, between Baltimore and Richmond; New York and Nashville, Tenn.; Memphis, Tenn.; Montgomery, Ala.; Selma, Ala.; between St. Louis and Nashville, Tenn.; Montgomery, Ala.; Selma, Ala.; Atlanta, Ga., etc.

Third. That we "be authorized to charge less for longer than for shorter distances for the transportation of * * * property" where the property moved between the more distant points is taken in competition between rail and water lines, and rail and water lines subject to the provisions of the act.

Instances of this kind of competition are shown in the case of traffic between eastern cities and Atlanta, Ga.; Macon, Ga.; Augusta, Ga.; Chattanooga, Tenn., etc.

Fourth. That we "be authorized to charge less for longer than for shorter distances for the transportation of * * * property" when the property moved between the more distant points is taken in competition between rail lines and rail lines.

This class of competition occurs in the case of traffic between Cincinnati, Ohio, and Chattanooga, Tenn.; between Louisville, Ky., and Chattanooga, Tenn.; Atlanta, Ga.; Montgomery, Ala., etc.

Fifth. That we "be authorized to charge less for longer than for shorter distances for the transportation of * * * property"

when the property is moved between competitive points connected only by a single direct rail line; the rates between such competitive points being fixed or controlled by competition of other carriers competing for the traffic between one of the points and other points, or between other points and other points.

Sixth. That we "be authorized to charge less for longer than for shorter distances for the transportation of * * * property" when the property is moved to and from points "under circumstances and conditions" which are believed to be "substantially similar."

While the six classes described do not embrace all the different conditions of competition, and while the different classes shade or blend into one another, still it is believed that your decision upon one case in each class will practically be a decision upon the larger portion of the applications which the carriers, members of this Association, may submit for your decision in the future.

First. Application is hereby made to charge less for the transportation of property between Louisville, Ky., and Memphis, Tenn., than for shorter distances on the same line, to the extent that the rail carriers may be enabled to adjust their rates of transportation so as to enable them to successfully compete with water carriers between the same points, without making any reduction from present rates to and from or between intermediate local stations.

The roads now forming the Louisville and Memphis line of the Louisville and Nashville Railroad Company were not primarily constructed with a view of competing for through traffic. As the Louisville and Nashville railroad was extended from Louisville in a southerly direction, traffic shipped from Memphis destined to points like Elizabethtown, Ky., were shipped to Louisville, by water, thence to destination by rail, the aggregate charge being that to Louisville plus the rate from Louisville to destination. Property shipped from Louisville, Ky., to Brownsville, Tenn., was shipped to Memphis by water, thence to Brownsville by rail, the aggregate charge being that to Memphis plus the rate from Memphis to destination.

When the rail line was completed rates of transportation by the rail line from Memphis to Elizabethtown were materially reduced and the facilities and character of service greatly improved. The same is true in the case of Louisville, Ky., and Brownsville, Tenn. Yet the rates received were in excess of the charges by the water carriers for the transportation of like kind of property between Louisville, Ky., and Memphis, Tenn.

Your attention is invited to the following comparative table, showing tonnage, ton miles, revenue, and rate per ton per mile received for the transportation of property to and from local stations between Louisville and Memphis; and tons, ton miles, revenue, and rate per ton per mile received for the transportation of property passing between Louisville and Memphis, and the total tons, ton miles, revenue, and average rate per ton per mile received from local and competitive traffic on the line between Louisville and Memphis for the fiscal year ending June, 1886:

Traffic.	Tons.	Ton miles.	Revenue.	Rate per ton per mile.	Percentage.
Local -----	518,949	47,037,878	\$767,155.93	1.6306c.	89.1
Competitive..	26,595	10,026,315	94,669.27	.9940	10.9
Total.....	545,544	57,064,193	861,825.20	1.6153	100

NOTE.—Only one-half of the traffic passing between stations on main stem from Memphis to Louisville is included.

The cost to the Louisville and Nashville Railroad Company of its road between Memphis Junction and Memphis and one-half the cost of the road between Memphis Junction and Louisville, with average equipment, has been \$16,500,000, on which the interest charge, at six per cent. per annum is \$990,000. The earnings from local and through traffic over that portion of the line between Memphis Junction and Memphis added to the earnings derived from transportation of traffic passing between Louisville and Memphis added to one-half the earnings from the transportation of traffic between stations, Louisville to Memphis Junction included, have not in any year been sufficient to pay operating expenses and the interest charge. This is conclusive evidence that the charges are not unjust nor unreasonable.

It only requires a glance at the foregoing figures to show that, if the company is to choose between reducing the rates for transportation of property to, from, and between intermediate stations so that the charge shall not in any case exceed that received for the transportation of property between Louisville and Memphis and abandoning the competitive traffic, it will, in justice to all parties, choose the latter. Financial embarrassments might and probably would result to the company from the adoption of either course. Nevertheless, it would plainly be the duty of the management to choose the course that would involve much the smaller loss, and endeavor, by reducing facilities and expenses, to avoid bankruptcy.

Second. Application is hereby made for authority to charge less for the transportation of property between New York and Nashville, Tenn., than for shorter distances to the extent that the rail and water carriers may be enabled to adjust their rates so as to successfully compete with the rates established by the all-rail lines, without making any reduction in present rates to and from or between intermediate points.

In this instance the maximum rate that can be charged from New York to Nashville is the rate from New York to Louisville plus the rate from Louisville to Nashville.

We have here the paradox of water and rail lines asking for authority to make the same relative rates between the points named as are made by the all-rail lines, the rates by the all-rail lines being fixed by water competition. By an arrangement that has been in effect for many years the rates from New York to Louisville are made relative to the rates from New York to Chicago, the rates between the two last-named points

being fixed during a large portion of the year by the rates charged by the canal and lake and the rail and lake carriers. The rate from Louisville to Nashville is fixed by competition with the river carriers between those points.

Practically, therefore, the rail line, New York to Nashville, becomes the shorter line, or the line by which the rates between the two points are fixed. It follows that the competing ocean and rail lines via Norfolk, Savannah, Charleston, etc., must make corresponding rates if they are to compete for the traffic. Again, it has been the custom to make the rates from New York to Nashville relative to the rates from New York to Memphis. The rates between the two last-named points, on many classes of freight, are fixed by competition of the water line and the rail and water lines from New York via New Orleans to Memphis. The rate from New York to Murfreesboro', Wartrace, Shelbyville, and other stations between Nashville and Chattanooga are made by adding to the rate from New York to Nashville the rate from Nashville to those stations. The rates from New York and other Eastern cities to Nashville, fixed as hereinbefore described, are upon a much lower basis than the Southern lines, members of this Association, can afford to adopt between intermediate points. The territory served by the lines in this Association, as compared with that served by the trunk lines north of the Ohio river, is much more thinly inhabited, and relatively the tonnage moved is much less.

Third. Application is hereby made for authority to charge less for the transportation of property between New York and Macon, Ga., than for shorter distances.

The maximum rates that can be secured for the transportation of property from New York to Macon are made by adding to the steamer rate from New York to Savannah the rail rate from Savannah to Macon. Practically this becomes the short line, or the line that fixes the rate.

There are two lines competing for the traffic via Savannah, viz., the steamships and the Central railroad of Georgia, and the steamships and the Savannah, Florida and Western, and the East Tennessee, Virginia, and Georgia roads via Jessup.

There are several lines via other routes competing for the traffic between the same points, viz., the line via Brunswick, the line via Charleston, the line via Port Royal, the Coast Line via Norfolk, the East Tennessee, Virginia and Georgia via Norfolk, and the Richmond and Danville road via West Point.

All these lines compete for traffic from New York to Chattanooga, Atlanta, and all points between Chattanooga and Macon. As rates are at present adjusted, the rates from New York via Savannah to all points north of Macon are greater than to Macon. It will at once be seen that unless authority be given to the lines approaching Macon from the north to accept less rates on shipments from New York to Macon than to intermediate points, those lines will be prevented from competing for shipments to Macon, though a point on their own lines. On the other hand, unless authority be given to the lines working via Savannah and Brunswick, and approaching Macon from the south, to accept less for the longer than for the shorter distance, they will be prohibited from competing for traffic to points on their own lines north of Macon.

Fourth. Application is hereby made for authority to charge less for the transportation of property between Cincinnati, Ohio, and Chattanooga, Tenn., than for shorter distances on the same line.

The rates from Cincinnati to Chattanooga are nominally made by competition between two rail lines, to wit, the Cincinnati Southern railway, 336 miles, and the Louisville and Nashville railroad, 446 miles. In practice the rates are made relative to rates from other points to Chattanooga, and relative to rates from Cincinnati and other points to other competitive points south of Chattanooga and the Memphis and Charleston railroad, viz., Montgomery, Selma, Birmingham, Ala., Atlanta, Ga., etc.; also on some classes of freight relative to rates from Baltimore, Philadelphia, New York, etc., to Chattanooga and other competitive points in the territory of the Association.

For some years the custom has been, whenever the rates were reduced or advanced from Eastern cities to Chattanooga, Atlanta, Montgomery, and Selma, corresponding changes were made in rates on some classes of property from Cincinnati to Chattanooga. Again, the custom has been that whenever, for any cause, the rates were reduced or advanced from Louisville, St. Louis, Chicago, etc., to Chattanooga and other competitive points in the territory, corresponding changes were made in rates from Cincinnati to Chattanooga. In this way water competition does affect indirectly rates from Cincinnati to Chattanooga. For instance, rates from St. Louis to Chattanooga, Montgomery, Selma, Birmingham, etc., may and often are reduced by the water and rail lines via Cairo, Ill.; Columbus, Miss.; Memphis, Tenn.; Vicksburg, Miss., and New Orleans, La. Rates from Eastern cities to Montgomery and Selma may be, and often are, affected by water and rail competition via New Orleans and Pensacola, and by water competition by ocean to Mobile, and by river thence to Selma and Montgomery.

If the Louisville and Nashville Railroad Company can not have the right to make rates between Cincinnati and Chattanooga as low at least as those made by the Cincinnati Southern Railroad Company between the same points, without reducing its rates from Cincinnati to intermediate stations, and from intermediate stations to intermediate stations, it must necessarily surrender all the traffic to the shorter line.

Fifth. Application is hereby made for authority to charge less for the transportation of property between Nashville, Tenn., and Birmingham, Ala., than for shorter distances on the same line.

The direct rail line from Nashville to Birmingham is 208 miles long. There is a less direct line via Chattanooga, but owing to its indirectness and other conditions the direct line has no competition. In this case the competition is purely that of market with market and product with product, "the most potent factor of competition."

In adjusting the rates between the numerous points reached by the carriers, members of this Association, continuous and persistent efforts have been made to secure and always maintain a fair and equitable relative adjustment. If the rates from Cincinnati to Chattanooga, Atlanta, Montgomery, Birmingham, etc., were reduced, corresponding reductions were made from all other points, including Nashville, to the same points. If competition between rail lines and rail and water lines from St. Louis to Selma, Montgomery, Birmingham, etc., caused a reduction

in rates, corresponding reductions were made from other points, including Nashville. The same is true on some classes of freight from eastern cities. If the rates for any reason, from New York to Atlanta, Ga., Chattanooga, Tenn., etc., were reduced, corresponding reductions were made from points in the West, including Nashville, to the same points.

Sixth. Application is hereby made for authority to charge less for the transportation of property between New York and Knoxville, Tenn., than for shorter distances on the same line.

Knoxville, Tenn., is located on the East Tennessee, Virginia and Georgia Railroad, nearly midway between Bristol and Chattanooga. Since the settlement of that part of the country, it has been the largest and most important business point in East Tennessee. Many years ago the managers of the East Tennessee, Virginia and Georgia Railroad inaugurated the policy of adjusting rates with a view of making Knoxville the point for the interchange of commodities for all the surrounding country. In pursuing this policy relatively low rates were made from Eastern cities and other points to Knoxville. Encouraged by this, a large number of persons engaged in business in Knoxville and invested a large amount of capital in trade. A sudden change in the adjustment of rates to and from Knoxville would be disastrous to some interests. While the present method of adjusting the rates in this case may be indefensible, and while it is believed to be the only instance where a discrimination of the kind exists that is not forced by competition, yet it would be manifestly unjust to suddenly disturb the commercial relations between Knoxville and its surrounding communities, which would involve many in distress without benefit to any. If rates of transportation to Knoxville are advanced, no material advantages accrue to the surrounding communities, for in that case they would continue to pay the same rates as before. This seems to be a case where your Commission may justly authorize an adjustment of rates, temporarily at least, the same as has been in effect for so long a time past.

In considering the foregoing applications, it is essential that your Commission do not lose sight of the important fact that the basis now and heretofore used keeps the relative adjustment of rates the same, not only between competitive points, but between competitive points and local stations. Keeping in mind that the competitive points in this territory are the basing points upon which rates to and from local stations are fixed, the system upon which rates are adjusted becomes comparatively simple and produces rates throughout the entire territory that are just and reasonable.

The rates to and from intermediate stations apply mainly to small shipments of a miscellaneous character. Rates upon property of low value, as compared with the weight and bulk, when shipped in large quantities to and from local stations, are in all cases made relatively low. The strong incentive to traffic agents to do everything in their power to promote traffic may be relied upon to develop the resources of the country at local stations to the fullest extent. In fact, the acts of the traffic agents must be closely scrutinized by the management of the various carriers to prevent the making of such rates relatively too low, thereby creating unjust discrimination.

INTER-STATE COMMERCE COMMISSION.

ORDERS SUSPENDING THE LONG AND SHORT HAUL CLAUSE.

The Inter-State Commerce Commission, at a session of said Commission, held at its rooms in the City of Washington, on the 6th day of April, 1887, in the matter of the petition of the Southern Railway and Steamship Association, application having been made to the Inter-State Commerce Commission, under Section 4 of the Act of Congress entitled an Act to regulate commerce, by the Southern Railway and Steamship Association, an organization composed of the following Railroad Companies, Lines and Systems, and Steamship Lines operating in connection therewith, to-wit :

The Alabama Great Southern Railroad; Atlanta & West Point Railroad Company; Central Railroad of Georgia system; Cincinnati, New Orleans & Texas Pacific Railroad Company; East Tennessee, Virginia & Georgia Railway Company; Georgia Railroad Company; Georgia Pacific Railway Company; Louisville & Nashville Railroad Company's system; Nashville, Chattanooga & St. Louis Railway Company; Norfolk & Western Railroad Company; Port Royal & Augusta Railway Co.; Richmond & Danville Railroad Company; Rome Railroad Company; Savannah, Griffin & North Alabama Railroad Company; Seaboard & Roanoke Railroad Company; South Carolina Railway Company; South & North Alabama Railway Line; Western Railroad of Alabama; Western & Atlantic Railroad Company; Atlantic Coast Line system; Baltimore, Chesapeake & Richmond Steamboat Company; Boston & Savannah Steamship Company; Clyde's Steam Lines; Merchants' & Miners' Transportation Company; New York & Charleston Steamship Company; Ocean Steamship Company; Old Dominion Steamship Company; common carriers, subject to the provisions of said Act, for authority to charge less for longer than for shorter distances in certain cases; that is to say, for the transportation of property from and to Boston, Mass.; Providence, R. I.; New York City, N. Y.; Philadelphia, Pa.; Baltimore, Md.; Alexandria, Va.; Cincinnati, O.; Jeffersonville, Ind.; Louisville, Ky.; Hickman, Ky.; Columbus, Ky.; East Cairo, Ky.; Cairo, Ill.; Henderson, Ky.; Evansville, Ind.; St. Louis, Mo.; and points northerly therefrom to and from Lynchburg, Va.; Danville, Va.; Strasburg, Va.; Norfolk, Va.; Portsmouth, Va.; Paint Rock, N. C.; Wilmington, N. C.; Charleston, S. C.; Savannah, Ga.; Brunswick, Ga.; Augusta, Ga.; Columbia, S. C.; Greenwood, S. C.; Laurens, S. C.; Spartanburg, S. C.; Greenville, S. C.; Anderson, S. C.; Macon, Ga.; Milledgeville, Ga.; Athens, Ga.; Gainesville, Ga.; Atlanta, Ga.; Rome, Ga.; Dalton, Ga.; Cedartown, Ga.; Chattanooga, Tenn.; Gadsden, Ala.; Columbus, Ga.; Albany, Ga.; Fort Gaines, Ga.; Eufaula, Ala.; Opelika, Ala.; West Point, Ga.; Montgomery, Ala.; Selma, Ala.; Birmingham, Ala.; Annis-

ton, Ala.; Mobile, Ala.; New Orleans, La.; Pensacola, Fla.; Fernandina, Fla.; Gainesville, Fla.; Baldwin, Fla.; Callahan, Fla.; Meridian, Miss.; Jackson, Miss.; Vicksburg, Miss.; Memphis, Tenn.; Nashville, Tenn.; and points southerly therefrom, and from and to said last named points, each with the other so far as the same are situated in different States, at lower rates than are charged from and to the same points to and from local points intermediate, the points last enumerated, over the same lines, and certain of said railroads, lines and systems having also severally made application for like authority so far as said points are reached by them, respectively, and said common carriers having presented as a reason for granting their said application the existence of water and other competition, claiming that the same can not be met except by maintaining rates heretofore established to and from said points, which are alleged to be too low to enable said common carriers to carry on business if applied to said local intermediate points, and further claiming that great disturbance of business will occur if the present traffic arrangements and rates are immediately changed; and it appearing to the Commission, after investigation of said petition and facts presented in support thereof, to be a proper case for a temporary order authorizing the existing rates to be maintained for the time being, until the Commission can make a complete examination of the matters alleged in said petition as reasons for relieving said common carriers from the operation of said section of said Act.

It is ordered that the said application be, and the same is hereby granted temporarily, subject to modification or revision by the Commission at any time, upon hearing or otherwise, and the said common carriers are hereby temporarily relieved from the operation of the fourth section of said Act, to the extent specified in the recitals of this order, and for a period not greater than ninety days from this date; subject, however, to the restriction that none of the said common carriers, while this order remains in force, shall, in any case, charge or receive compensation for the transportation of property between stations on their respective lines where more is charged for a shorter than for a longer haul, which shall be greater than the rates in force and charged and received by said carriers, respectively, on the 31st day of March, 1887, schedules of which have been filed with the Commission.

It is made a further condition of this order that a printed copy hereof shall be forthwith publicly posted and kept with the schedule of rates, fares and charges, at every station upon the lines of said common carriers where such schedule is by law required to be posted and kept for the use of the public.

And it is further ordered that the Commission convene at Atlanta, Ga., on the 26th day of April, 1887, at three o'clock P. M., and thereafter at Mobile, Ala., on April 29th; at New Orleans, La., on May 2d, and at Memphis, Tenn., on May 4th, for the consideration of the subject matter of this petition; at which places and times said common carriers or any of them may appear and present application for said relief, with evidence in support thereof, which applications, in each case, must show the precise relief desired, the facts upon which the same is claimed, and the extent to which relief from the operation of said section of said Act is asked for, and at the same places and times any person interested in opposing any

such applications may also appear and be heard, and at any time prior to May 6th, 1887, the Commission will receive printed or written communications in support of, or in opposition to, the relief asked by said petitions. This announcement respecting the time and places of hearing, and the method of procedure, is subject to change or enlargement in the discretion of the Commission.

For the Commission :

(Signed)

T. M. COOLEY, *Chairman*.

ADDITIONAL ORDER.

The Inter-State Commerce Commission, at a session of said Commission, held at its rooms in the City of Washington, on the 7th day of April, 1887, in the matter of the petition of the Southern Railway and Steamship Association, a verified petition having been filed in the above entitled matter, setting forth that certain competitive points had been inadvertently omitted in the petition heretofore filed, on which an order was made by the Commission, dated April 6th, 1887, and asking for an amendment of said petition, and order, so that said points may be included therein, to-wit : Petersburg, Va.; Richmond, Va.; West Point, Va.; Raleigh, N. C.; Charlotte, N. C.; Fayetteville, N. C.; Jacksonville, Fla.; Florence, S. C.; Tarboro, N. C.; Goldsboro, N. C.; Newberne, N. C.; Knoxville, Tenn.; Columbus, Miss.; Williamston, N. C.; Charlottesville, Va.; Georgetown, S. C.: It is ordered, after examination of said petition, and consideration of the matters set forth, that said application be granted, and that said petition and order be amended *nunc pro tunc* by inserting the names of said enumerated points as points from and to which lower rates may be charged than from and to local and intermediate points, subject to all the provisions of said order and for the limited period in said order stated.

On behalf of the Commission :

(Signed)

T. M. COOLEY, *Chairman*.

Reply to Petitions of Railway Conductors, Traders' and Travelers' Union and others.

The Interstate Commerce Commission on April 18, 1887, made public the following ruling and discourse:

The Interstate Commerce Commission, Washington, April 16.—In the matter of the petition of the Order of Railway Conductors.

In the matter of the petition of the Traders' and Travelers' Union.

An application in writing has been made to the commission for its answer to the following questions propounded on behalf of the Order of Railway Conductors:

1. Are railway companies prohibited from issuing free transportation to the immediate families of employees over their own railways?

2. Are railway companies prohibited from issuing free or reduced transportation to officers of associations composed exclusively of railway employees, while those officers are temporarily out of railway service and exclusively employed by those associations?

3. May railway companies issue passes to employees of other rail-

ways on the application of the employee, or must such application come from the officer of the company by which he is employed?

4. May railway companies issue free or reduced transportation to those who make railway service their business or trade while temporarily out of employment and in search of situations?

5. May railway companies provide free transportation for delegates to the annual conventions of an association composed exclusively of railway employees upon certificates from the officers of the association that they are such representatives?

6. If free transportation may be furnished to representatives described in question 5, must all such representatives be actually in the employ of some railway, or may it include those who may be temporarily out of employment and those temporarily engaged in other employments as officers of such association?

7. If free transportation is provided delegates described in question 5, may it include members of the immediate families of delegates?

8. If free transportation or reduced rates are provided for the representatives of any one association, must the same be extended to all others which are composed exclusively of railway employees on application?

Another application has been made to the commission on behalf of the Traders' and Travelers' Union stating the system under which an additional allowance of free baggage has been heretofore carried by commercial travelers subject to written agreement for registry and indemnification, which system the commission is requested to examine carefully and advise us if there is any reason why a railroad company desiring to do so should not enter into such an arrangement to grant under stated terms an increased allowance of free baggage. These two petitions, presented by highly respectable organizations and raising questions of immediate practical importance, are representatives of a large number of similar applications which have been made to the commission for its construction of provisions of the "act to regulate commerce," as applied to the various points at which these provisions touch the customs of the past. They have been selected simply as they indicate the general character of all and enable the commission to announce certain conclusions to which it has arrived respecting its jurisdiction and its powers.

It is obvious from the tenor of such applications as these, which reach us by every mail, that the impression is generally prevalent that this commission has power to construe, interpret, and apply the law by preliminary judgment. We are continually appealed to for decisions in advance as to whether common carriers, said to be willing to adopt certain methods of dealing with respect to interstate commerce, can do so without subjecting themselves to the penalties denounced by the statute for violating its provisions.

A careful reading of the "act to regulate commerce," under which this commission is organized, will show to the petitioners and others who have made similar applications that no jurisdiction has been given us to answer questions like those under consideration. An expression of our opinion on these subjects at this time, being neither a duty imposed nor a power conferred by the statute, would carry with it no judicial efficacy or sanction; in fact, would be no more useful to the public or the carrier than the opinion of other men upon the same points.

Two sections of the law confer power upon the commission to entertain and decide applications and petitions. Section 4 empowers us upon applications by a common carrier to authorize such common carrier in special cases to charge less for longer than for shorter distances, over the same line; and also to prescribe the extent of relief from the operation of the former part of the same section which a designated common carrier may from time to time enjoy. A large number of petitions have been filed under this section, the consideration of which is at this time engaging the attention of the commission, and nothing said in this opinion is to be treated as in any manner bearing thereon. It is obvious that applications like those of the Railway Conductors' and the Traders' and Travelers' Union have no relation whatever to the duties imposed upon us by section 4. And this is the only section of the law which the commission has power to suspend or relax.

Section 13 authorizes complaints to the commission and confers jurisdiction to entertain the same. It provides that any person complaining of anything done or omitted to be done by any common carrier subject to the provisions of this act in contravention of the provisions thereof may apply to said commission by petition, which shall briefly state the facts, notice and opportunity for answer having been given. Unless satisfaction is made an investigation is required. Upon such an investigation the commission will necessarily entertain the consideration of the question whether the conduct complained of is or is not in contravention of the provisions of the law; and if it so adjudge it is authorized to issue a notice enjoining the carrier from further violation of the law and to award reparation for the injury done, or both. But neither the Railway Conductors' nor Traders' and Travelers' Union complain that any common carrier has violated the law. On the contrary, they both aver that the railroad companies do not now violate the law, and do not wish to do so. The conductors say that they fear they will not receive passes as heretofore, and the Traders and Travelers' say that they fear commercial travelers will not be allowed free transportation for 150 pounds of extra baggage, as was allowed last year. They present no complaint of the provisions of the law. If a railroad company should issue a pass to a conductor and his family to attend the approaching convention, or should transport three hundred pounds of baggage free for a commercial traveler, under the registry and indemnity system, and some person feeling aggrieved should make complaint of unjust discrimination, it would then be proper for the commission to entertain the question of whether such conduct was or was not in violation of the law, and if so whether it was or was not within the exceptions as stated in section 22. Complaints may also be presented if the charges made by the carriers are not considered reasonable and just. But until questions of this kind come before us in the way clearly indicated by the statute, it would be worse than useless for us to express our opinions or give advice. We should not only lay ourselves justly open to the charge of assuming unwarranted authority, but should also run great risk of involving all concerned in what the courts might afterward hold to be breaches of the law, by hasty and ill-considered conclusions, based upon *ex parte* statements and arguments. Although it might be desirable, or at least convenient, in respect to any piece of new legislation to have a tribunal

established to which inquirers might apply for instruction and advice regarding the meaning of the law and its application to suggested "circumstances and conditions," a moment's reflection will show that no such tribunal could be properly erected. Congress has not taken the management of the railroads out of the hands of the railroad companies. It has simply established certain general principles under which interstate commerce must be conducted.

It has enacted in section 1 that all charges for interstate transportation "shall be reasonable and just;" has prohibited in section 2 all manner of unjust discriminations; has forbidden in section 3 all undue and unreasonable preferences and advantages; has required in the same section reasonable and equal facilities for the interchange of traffic, and has prohibited in section 5 the pooling of freights. That in substance is the interstate commerce law.

There is nothing novel in these provisions. They simply bring back the business of the common carriers to the well-settled principles of the common law. Yet no one can deny that there was urgent need of their statutory formulation. Alleged difficulties in putting them in operation only disclose examples of the extent to which they have been violated in the past. These sections of the act are expressed in plain words. A construction must be given to them in the first instance by the carriers and their patrons. When a course of conduct has been adopted, of which complaint is made that it violates the law, the decision of the question will rest with the courts or with the commission, as the complaining party may elect. This is the orderly method in which all legislation is administered and applied, and the statute in question presents no exception.

One more suggestion may properly be added. It appears from the numerous petitions that have been laid before us for preliminary advice, many of them obviously upon the suggestion if not by the procurement of the carriers themselves, that common comment on the law, by the carriers and those who have heretofore enjoyed special favors at their hands, describe the system of penalties which the law provides as extreme, and the risks imposed upon unintentional and unwitting violators of its provisions as enormous. Such comment seems to us neither fair nor just. It is true that section 8 provides that for violations of the law, and for failure to do an act which the law requires, the offending carrier shall be liable to the injured party for the actual damages sustained, together with a reasonable counsel or attorney's fee, to be fixed by the court, and collected with the costs in the case. It is also true section 10 imposes a fine of "not to exceed \$5,000" upon common carriers and their officers, agents, and servants who willfully do or cause to be done, or willingly suffer or permit to be done, any prohibited act, or upon conviction in a district court of the United States. The civil remedy described in section 8 adds an attorney fee to the existing common law right of any injured party to recover the full amount of his damages, a condition of affairs which can not greatly alarm corporations disposed to fair dealing; while the criminal remedy given in section 10 obviously pertains to intentional violators of the law, and is in these cases to be graduated by the court according to the enormity of the offense.

Good faith, exhibited in an honest effort to carry out the require-

ments of the law, will involve reasonable and fair-minded officials in no danger of damages or fine. The elasticity of the statute in their favor is noticeable. The unjust discrimination of section 2 must be "in a like and contemporaneous service in the transportation of a like kind of traffic, under substantially similar circumstanced conditions."

The preference or advantage of section 3 must be "undue or unreasonable." Throughout the act, as it now stands in confessedly experimental form, there is exhibited an obvious and generous purpose to allow to the corporations ample scope in the conduct of their business as common carriers for the people, and fair consideration of every reasonable claim, while insisting upon just, impartial, open, and consistent rates of charge to which every citizen shall be subjected alike whose situation is the same. Surely, the people could not ask for less. The language and the tenor of the act wholly fail to justify railroad managers, if any such there be, who refuse to accept responsibility, decline to offer rates, neglect to announce conditions of traffic, embarrass the customary interchange of business, and impose stagnation upon trade, while they "stick in the bark" of the phrases and expressions of the law, inventing doubts and imagining dangers. It is still more unjustifiable for railroad companies to make use of the general clauses of the law, ignoring its modifying and enlarging words and formulas in order to impose additional burdens upon localities, trades, professions, manufacturers, consumers, classes of travelers, or employees, straining and representing every construction in favor of the corporate treasury, and quoting the new law as their authority for all manner of petty exactions.

The powers of the commission are entirely adequate to cope with such conduct, the existence of which is not affirmed, although it has been somewhat publicly suggested. The same statute which enacts that charges for like service shall be uniform to all, also provides that charges in every case, and for every kind and class of service, shall be reasonable and just. As the law is practically applied, it is said to contain many elements of advantage to the economical and profitable management of the business of the carriers, which they have not been slow to apprehend and take the benefit of. The commission venture to express the hope that with this explanation respecting the mutual functions of the carriers, and the commissioners in carrying the law into effect according to its true intent and meaning, there will be no lack of good faith and active co-operation in continuing the normal activity of every kind of reputable industry and traffic throughout the land, under favorable, fair and reasonable terms, conceding frankly to the people all the rights, benefits, advantages, and equal privileges which the "act to regulate commerce" was intended to secure.

Petition of Transcontinental Lines Granted.

On April 23, 1887, the Interstate Commerce Commission made an order suspending the fourth section of the law for seventy-five days as applied to the transcontinental roads, but subject to revocation and with a proviso that intermediate rates shall not be raised above those in force

on April 20. This applies to the Northern Pacific, Southern Pacific, Atchison, Topeka and Santa Fé, and St. Louis and San Francisco lines. In an official statement accompanying the order the Commissioner says :

“ It is in evidence before us that the rates to and from local points on some of the transcontinental lines have been somewhat reduced since April 5, and also that the through rates which prevailed prior to April 5 were the result of a war of rates among the lines and produced a discrepancy between local rates and through rates, which the carriers agree was unreasonable and do not desire to return to.

“ The commission is earnestly engaged in considering the course which it will finally adopt in reference to section 4. Many conflicting interests have indicated a desire to be heard, and should have an opportunity before our final decision is reached. All such persons are invited to present facts and arguments. For the purposes of this matter only and without authorizing any general practice of that nature, in order to obtain the fullest information and afford the most extended facilities to distant points of the country, the commission will receive affidavits as to matters of fact and printed or written arguments or matters of fact or of law, which should be presented without delay. This invitation extends to the general subject of questions arising under section 4, and is not limited to the petitions of the transcontinental roads.

“ Meanwhile the attention of the carriers is directed to the propriety of devoting the intermediate time to the preservation and adoption of tariffs which shall attempt to meet in good faith the requirements of the “ act to regulate commerce,” giving the same a fair and reasonable interpretation in respect to all its various features. In making these orders the commission does not finally determine upon their propriety or justice; but only that pending the investigation now in progress, it is proper, right and just that the permission provided for be given, in order that the general business of the country shall receive no unnecessary shock or damage. The orders are intended to prevent, as far as may be possible, the occurrence of mischief in a period which, in a certain sense, is transitional and which must of necessity involve changes, the full extent of which can not at present be foreseen.”

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